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NATIONAL DEFENSE MIGRATION

HEARINGS

BEFORE THE

SELECT COMMITTEE INVESTIGATING
NATIONAL DEFENSE MIGRATION
HOUSE OF REPRESENTATIVES

SEVENTY-SEVENTH CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 113

A RESOLUTION TO INQUIRE FURTHER INTO THE INTERSTATE MIGRATION OF CITIZENS, EMPHASIZING THE PRESENT AND POTENTIAL CONSEQUENCES OF THE MIGRATION CAUSED BY THE NATIONAL DEFENSE PROGRAM, THE EFFECTS OF MIGRATION ON THE VARIOUS AGRICULTURAL PROGRAMS, AND THE DEVELOPMENT OF ECONOMIC CONDITIONS CREATING STRANDED COMMUNITIES AND AREAS OF POTENTIAL MIGRATION

PART 26
WASHINGTON HEARINGS

JANUARY 19, 1942

CONSTITUTIONAL RIGHTS OF DESTITUTE CITIZENS OF THE UNITED STATES TO MOVE FROM STATE TO STATE—THE EDWARDS CASE

Printed for the use of the Select Committee Investigating
National Defense Migration

Congress of the United States
HOUSE COMMITTEE INVESTIGATING
NATIONAL DEFENSE MIGRATION
Washington, D. C.

To the Addressee:

You will note the omission of Part 26 from this mailing.

Part 26 contains a complete record of the litigation in the so-called "Edwards case," appealed from the courts of California to the United States Supreme Court and decided by that Court on November 24, 1941.

The case dealt with the "Constitutional rights of destitute citizens of the United States to move from State to State." The Supreme Court decision affected statutes in 27 States other than California—statutes which, in effect, set up immigration barriers at State lines.

Persons or organizations interested in this subject may obtain a copy of Part 26 by writing the committee or through the Superintendent of Documents, Washington, D. C.

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National Defense Migration

UNITED STATES
GOVERNMENT PRINTING OFFICE
60396 WASHINGTON : 1942

SELECT COMMITTEE INVESTIGATING NATIONAL DEFENSE MIGRATION

JOHN H. TOLAN, California, *Chairman*
Sept. 8. 1942
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JOHN J. SPARKMAN, Alabama
CARL T. CURTIS, Nebraska
FRANK C. OSMERS, Jr., New Jersey

Robert K. Lamb, *Staff Director*
Leonard A. Thomas, *Counsel*

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he had last been employed by the Works Progress Administration.[1] The law under which the Administration operates contains a provision that—

> the agency providing the employment shall determine whether such persons are able to perform the work on work projects to which they can be assigned and no person shall be employed or retained for employment on any such project whose work habits are such or work record shows that he is incapable of performing satisfactorily the work to which he may be assigned on the project (54 Stat. 611, Public Resolution 88, 76th Cong., 3d sess.).

The Court unanimously rejected the statute, but rendered three opinions. The principal opinion, read by Justice Byrnes, his first since taking his seat on the Court in October 1940, held that this legislation was not a valid exercise of the police power of the State of California, in that it imposes an unconstitutional burden upon interstate commerce. Separate concurring opinions were read by Justice Jackson and Justice Douglas, who was joined by Justices Black and Murphy, holding that the legislation violated the privileges and immunities clause of the fourteenth amendment. The decision affected the validity of similar statutes in 27 other States.

The committee has followed this litigation with extreme interest, particularly so because it was an attempt to halt the flow of migration into the State. By reason of its investigation, the committee has long been convinced that the problems arising from the migration of destitute citizens, and more recently those of our citizens seeking employment in defense industries, are national in scope and do not permit of diverse treatment by the 48 State governments. This conviction of the committee has been entirely justified by the decision of Justice Byrnes, who stated that "the relief of the needy has become the common responsibility and concern of the whole Nation", and no State can isolate itself "from difficulties common to all of them." He went on to cite the words of the late Justice Cardozo that the Constitution "was framed upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division." Each member of the committee as a body interested in these problems, and as a thoughtful American, has rejoiced in this Supreme Court declaration that such an un-American exclusion act be invalidated.

The *Edwards case* came to the attention of the committee in the summer of 1940, shortly after its creation by the House of Representatives. In hearings held in San Francisco in September 1940 R. W. Henderson, Esq., of Bakersfield, Calif., presented for the record copy of a brief which the Kern County branch of the American Civil Liberties Union had filed as amicus curiae, when the validity of this statute was before the Superior Court of the State of California in and for the county of Yuba. Edwards had been convicted on February 17, 1940, in the justice's court of Marysville Township, county of Yuba, of a violation of the aforementioned statute, having been charged with and found guilty of bringing his wife's brother-in-law, Frank Duncan, from Spur, Tex., to Marysville, Calif. The case was appealed to the Superior Court of the State of California. On June 26, 1940, the Superior Court upheld the judgment of the justice's court, and Edwards petitioned that an appeal be allowed to the Supreme Court of the United States.

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[1] The name of the Works Progress Administration was changed to Work Projects Administration July 1, 1939, by Reorganization Plan No. 1.

The facts involved, stipulated and agreed to by the parties to the action and as found by the Supreme Court, were as follows:

Fred F. Edwards is a citizen of the United States and a resident of the State of California. In December 1939 he left his home in Marysville, Calif., for Spur, Tex., with the intention of bringing back to Marysville his wife's brother,[1] Frank Duncan, a citizen of the United States and a resident of the State of Texas. When he arrived in Texas, Edwards learned that Duncan had last been employed by the Works Progress Administration. Edwards thus became aware of the fact that Duncan was an indigent person and he continued to be aware of it throughout the period involved in this case. The two men agreed that Edwards should transport Duncan from Texas to Marysville in Edwards' automobile. Accordingly, they left Spur on January 1, 1940, entered California by way of Arizona on January 3, and reached Marysville on January 5. When he left Texas, Duncan had about $20. It had all been spent by the time he reached Marysville. He lived with Edwards for about 10 days until he obtained financial assistance from the Farm Security Administration. During the 10-day interval he had no employment.

Probable jurisdiction of the appeal was noted by the Supreme Court of the United States on December 16, 1940. Subsequently, the case was reached for oral argument before the Court on Monday, April 28, 1941. Prior to the oral argument, the complete record of the committee was made available to Samuel Slaff, Esq., counsel for the American Civil Liberties Union, which was prosecuting the appeal on behalf of Edwards.

Spurred by his profound interest in migrating American citizens, and with the unanimous consent of the members of the committee, the chairman, Hon. John H. Tolan, himself a resident of and Representative from the Seventh California Congressional District, sought, and by special leave obtained, permission of the Supreme Court to appear before it on the oral argument, as amicus curiae, for the purpose of rendering what assistance he could to the Court by presenting the pertinent findings of the committee in connection with the interstate migration of destitute citizens.

Oral arguments were presented on April 28 and 29 by Mr. Samuel Slaff and by Mr. John H. Tolan, as amicus curiae, for Edwards. No representative of the county of Yuba, nor of the State of California, appeared before the Court at this time. On May 5, 1941, the Court ordered a reargument of the case for Monday, October 13, 1941, at the same time requesting the attorney general of the State of California to appear either in person or by his representative to present the views of the State with particular reference to the judicial or administrative interpretation by State authorities of the statute involved.

In view of the order for reargument, the chairman respectfully requested that he be given permission to again appear as amicus curiae and to file a brief on behalf of the committee. The Court graciously granted this request.

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[1] Actually, Frank Duncan was Mrs. Edwards' brother-in-law. Mrs. Edwards and Mrs. Duncan are sisters.

As a result, and with the earnest cooperation of Irwin W. Silverman, Esq., whose services were made available to the committee through the courtesy of John T. Vance, law librarian of the Library of Congress, a brief analyzing the legal problems involved was prepared and presented to the Court. Through the efforts of Leonard A. Thomas, counsel, and Herbert Roback, member of the staff of the committee, an analysis was prepared of material bearing on the economic and social aspects of the case in connection with migration. This, too, was filed with the Court as a supplementary brief.

On October 21, 1941, the case was reargued before the Supreme Court by Mr. Samuel Slaff, Mr. John H. Tolan, and W. T. Sweigert, assistant attorney general, representing the Hon. Earl Warren, attorney general of the State of California. And on November 24, 1941, the Court rendered the aforementioned decision.

Mr. Chairman, it might be of interest to the committee to know that Fred Edwards is now employed by the California State Department of Agriculture as a fruit inspector in a cannery at San Jose, Calif., whilst Frank Duncan is employed in national defense production in a chemical plant at Pittsburg, Calif.

Mr. Chairman, the *Edwards case* not only struck down a statute which operated to demean the status of citizens of the United States, but the decision points the way to a reexamination of all measures by which our State and Federal governments are attempting to solve the problems of our migrating citizens. In order that the Congress should have before it the complete record of this litigation when it considers these problems, I should like to offer for the record of this committee, and request that the same be accepted as committee exhibits, the following documents:

1. Copy of transcript of record, filed with the Supreme Court of the United States on November 20, 1940.
2. Copy of original brief of American Civil Liberties Union, as amicus curiae, before Superior Court of the State of California.
3. Copy of statement as to jurisdiction, filed with Supreme Court on November 20, 1940.
4. Copy of appellant's brief, by Samuel Slaff, dated February 17, 1941.
5. Copy of appellee and respondent's brief, by district attorney of Yuba County, Calif.
6. Copy of order of the Supreme Court directing reargument and requesting appearance of attorney general of California.
7. Copy of brief of the attorney general of the State of California on behalf of appellee.
8. Copy of supplement to brief of the attorney general of the State of California on behalf of appellee.
9. Copy of further supplement to brief of the attorney general of the State of California on behalf of appellee.
10. Copy of brief of John H. Tolan for the Select Committee of the House of Representatives of the United States, appointed pursuant to House Resolution No. 63, April 22, 1940, to Investigate Interstate Migration of Destitute Citizens, as amicus curiae.
11. Copy of supplemental statement of John H. Tolan, amicus curiae.
12. Copy of supplement to brief of John H. Tolan, amicus curiae.
13. Oral statement of Samuel Slaff, attorney for appellant, before the Supreme Court of the United States.

14. Oral statement of Hon. John H. Tolan, amicus curiae, before the Supreme Court of the United States.
15. Oral statement of W. T. Sweigert, assistant attorney general of the State of California, before the Supreme Court of the United States.
16. Copy of decision of November 24, 1941, of the Supreme Court.

The CHAIRMAN. We accept this material for the record. I should like to say that we, as members of a committee of the Congress of the United States deeply interested in this subject, are highly pleased with the recent decision of the United States Supreme Court. It clarifies the status and rights of the individual under a democratic form of government and is in line with recommendations made by this committee in its general report (H. Rept. 369) and in its first interim report (H. Rept. 1286).

By its construction of our present laws, the Supreme Court has simplified this part of the work of our committee, and we feel that it has given to the country a clearer conception of the rights of the individual—especially his right of freedom of movement across State lines, as well as his right to do business across State lines.

Exhibit No. 1.

TRANSCRIPT OF RECORD

Supreme Court of the United States. October Term, 1940. No. 588. *Fred F. Edwards, Appellant,* vs. *The People of the State of California.* Appeal from the Superior Court of the State of California in and for the County of Yuba. Filed November 20, 1940

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[fols. 1–3] IN THE JUSTICE'S COURT OF MARYSVILLE TOWNSHIP, COUNTY OF YUBA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

Against

FRED F. EDWARDS, Defendant.

COMPLAINT—Filed February 7, 1940

Before L. J. Mulvany Justice of the Peace.

J. E. Barton being duly sworn upon oath, accuses Fred F. Edwards of a Misdemeanor to wit: Violation of Sec. 2615 Welfare and Institutions Code of the State of California, (Stats. 1933, Ch. 761 & Amendments thereto) committed as follows, to-wit: that on or about the 3rd day of January, 1940, and within the limits of the County of Yuba, in the State of California, the said defendant Fred F. Edwards did then and there wilfully and unlawfully bring and/or assist in bringing into the State of California an indigent person, to-wit, Frank Duncan, who is not and was not at said time a resident of the State of California, being at said time a resident of Spur, Dixon County, Texas, and the said defendant knowing said Frank Duncan to be an indigent person;

All of which was and is contrary to the form, force and effect of the Statute in such case made and provided, and against the peace and dignity of the people of the State [fol. 4] of California.

J. E. Barton.

Subscribed and sworn to before me at the County of Yuba, the 7th day of February, 1940. L. J. Mulvany, Justice of the Peace, Marysville Township, Yuba County, California. (Seal.)

[File endorsement omitted.]

[fol. 5] IN THE JUSTICE'S COURT OF MARYSVILLE TOWNSHIP, COUNTY OF YUBA

DEMURRER—Filed February 17, 1940

Defendant demurs to the complaint herein upon the following grounds:

I

The facts stated in said complaint do not constitute a public offense.

II

The Court has no jurisdiction of the offense charged in said complaint.

III

The complaint contains matters which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

IV

That more than one offense is charged in said complaint and the same are not connected together in their commission and are not of the same class of crime or offense as is excepted by the provisions of Section 954 of the Penal Code of California.

V

The complaint does not substantially conform to the requirements of Sections 950, 951 and 952 of the Penal Code of California, or to any of said sections.

Wherefore, defendant demands that said complaint be dismissed.

[fol. 6] Philip Adams, W. M. Collins, Attorneys for Defendant.

We, the undersigned attorneys for defendant, do hereby certify that the above and foregoing demurrer is well taken in point of law and is not interposed for purposes of delay.

Philip Adams, W. M. Collins, Attorneys for Defendant.

[fol. 7] Points and Authorities in Support of Demurrer

Inasmuch as the statute declares it to be a crime for a person to bring or assist in bringing an indigent person into the State it makes it a crime for him to aid, abet, encourage, assist or advocate by action, speech or press the exercise by the indigent person of a lawful right guaranteed to him by the Federal and State constitutions, namely, the freedom of movement or locomotion. It therefore contravenes freedom of speech and press and is void as contrary to public policy. We submit, therefore that the statute is invalid, void and unconstitutional in the following respects, to-wit:—

1. The statute as construed and as applied to defendant is void inasmuch as it attempts to regulate commerce between the States in violation of the "commerce clause" of Section 8 of Article I of the Constitution of the United States.
2. The statute as construed and as applied to defendant is void as it attempts to regulate the migration of persons within and between the States in violation of the provisions of Section 9 of Article I of the Constitution of the United States.
3. The statute as construed and as applied to defendant is void as it is in substance an ex-post facto law or retrospective statute forbidden by the provisions of Section 9 of Article I of the Constitution of the United States and Section 16 of Article I of the California constitution.
4. The statute as construed and as applied to defendant is void as a denial of free speech and press guaranteed by [fol. 8] the provisions of the 1st Amendment of the Federal constitution and the provisions of the 14th Amendment which prohibits a state from interfering with the exercise thereof.
5. The statute as construed and as applied to defendant is void as it punishes and denies free speech and press guaranteed by the provisions of Section 9 of Article I of the California constitution and by the 1st Amendment of the federal constitution, which liberties are guaranteed by the 14th Amendment free from interference by the State.
6. The statute as construed and as applied to defendant is void inasmuch as it denies to defendant freedom of speech, press, and movement or locomotion without due process of law and denies to him the equal protection of the law in violation of the due process clause and the equal protection clause of the 14th Amendment of the federal constitution and Section 13 of the California constitution.
7. The statute as construed and as applied to defendant is void as it abridges the privileges and immunities (freedom of speech, press and movement) in violation of Section 1 of the 14th Amendment of the federal constitution and in violation of the provisions of Section 2 of Article IV of the federal constitution.
8. The statute as construed and as applied to defendant is void inasmuch as it amounts to a denial of the right to assemble, and to petition the government for redress, in violation of the 1st Amendment of the federal consitution, [fol. 9] and in violation of the provisions of Section 10 of Article I of the California constitution which right is protected from state interference under the due process and equal protection clauses of the 14th Amendment of the federal constitution.

9. The statute as construed and as applied to defendant is void inasmuch as any punishment it inflicts for aiding another person to exercise a guaranteed constitutional right would amount to a cruel and unusual punishment forbidden by Section 6 of Article I of the California constitution and by Section 10 of Article I of the federal constitution and by implication by the 14th amendment of the federal constitution.

10. The statute as construed and as applied to defendant is void as being contrary to public policy inasmuch as it punishes a person for assisting or advocating the exercise of a lawful action guaranteed free from interference by the state and federal constitutions, namely, freedom of speech, press, and movement.

11. The statute as construed and as applied to defendant is void as in violation of the provisions of Section 21 of Article I of the California constitution.

12. The statute is void inasmuch as a violation thereof is made punishable as a misdemeanor under Section 19 of the Penal Code of California which provides for the assessment of a fine and imprisonment, or both, and inasmuch as it applies to corporations as well as to individuals it is necessarily void since a corporation cannot be jailed.

[fol. 10] 13. Because of non-user since its original enactment the "Doctrine of desuetude" applies and the statute is a dead letter.

14. The statute is invalid and void because it violates the provisions of Section 24 of Article IV of the California constitution in that it embraces more than one subject and the subject is not expressed in its title.

15. The statute is void and invalid as a local or special law violative of the provisions of Section 25 of Article IV of the California constitution, subdivision 19, and for the further reason that it lacks a uniform operation and hence violates Section 11 of Article I of the California constitution.

16. The statute is void inasmuch as it is vague, indefinite, uncertain and ambiguous in that it does not appear therein or therefrom how a corporation to which it applies can be sent to jail for a violation thereof.

17. The statute as construed and as applied to defendant is void in that it is an unreasonable, arbitrary and oppressive expression of police power not based upon any emergency condition that threatens the public health, safety or morals or endangers the peace or safety of the state.

18. The statute as construed and as applied to defendant is void as an unlawful interference with family relationships since it prevents a person from providing for and assisting members of his family in domestic economy.

Respectfully submitted, Philip Adams, W. M. Collins, Attorneys for Defendant.

[fol. 11] [File endorsement omitted]

[fol. 12] IN THE JUSTICE COURT OF MARYSVILLE TOWNSHIP COUNTY OF YUBA

AMENDED DEMURRER—Filed February 17, 1940

Defendant demurs to the complaint herein upon the following grounds, amending and supplementing his original demurrer herein.

I

Defendant refers to and incorporates herein as fully as though set forth in full, all of the grounds set forth in his original demurrer filed in this action.

II

That the statute upon which this complaint is founded is unconstitutional and void, upon the grounds and for the reasons set out in the Points and Authorities set forth, and attached to, the original demurrer in this action. Said points and authorities are referred to and incorporated in this Amended Demurrer as fully as though copied herein at full length.

Wherefore, defendant demands that said complaint be dismissed.

Philip Adams, Attorney for Defendant.

STIPULATION

It is hereby stipulated by and between the attorneys for the plaintiff and defendant in this action of the People of [fol. 13] the State of California against Fred F. Edwards, that the within Amended Demurrer may be filed and received by the court with like effect as though all of the matters therein had been contained in the original Demurrer.

Joseph L. Heenan, District Attorney of Yuba County, Attorney for the Plaintiff. Philip Adams, Attorney for Defendant.

Receipt is hereby acknowledged of a copy of the Original Demurrer, a copy of the Points and Authorities, and of the Amended Demurrer in this action, this 17th day of February, 1940.

Joseph L. Heenan, District Attorney of Yuba County.

[File endorsement omitted.]

[fol. 14] IN THE JUSTICE'S COURT OF MARYSVILLE TOWNSHIP, COUNTY OF YUBA

COPY OF DOCKET ENTRIES

Complaint of J. E. Barton, Charging Misdemeanor Viol., Sec. 2615, Stats. 1933 Ch. 761 Amend. Committed at Yuba County, Jan. 3rd., 1940, Joseph L. Heenan, Philip Adams.

Feb. 7. Complaint filed warrant of arrest issued and delivered to Sheriff McCoy.
Feb. 9. Arrainged, rights explained, time set to plea, Feb. 13, 4 P. M. out on $1000.00 Bail Bond.
Feb. 13. Time set to plea Feb. 17, 1940, 10 A. M.
Feb. 17. Demurrer filed, demurrer over-ruled.
Trial held, witness Fred F. Edwards and Frank Duncan.
The Court found Fred F. Edwards guilty as charged.
Edwards waived time.
The Court sentenced Edwards to serve six months in the Yuba County Jail, sentence suspended.

L. J. Mulvany, J. P.

Feb. 17. Amended demurrer filed.
Feb. 17. Verbal notice to appeal entered.
Feb. 23. Notice of Appeal filed.
Mar. 1. Statement on appeal filed.

[fol. 15] IN THE JUSTICE'S COURT OF MARYSVILLE TOWNSHIP, COUNTY OF YUBA

NOTICE OF APPEAL

To the Clerk of the above-entitled Court, to the Plaintiff above-named and to Joseph L. Keenan, Esq., District Attorney of Yuba County, Attorney for Plaintiff:

Please take notice that Fred F. Edwards, the defendant above-named, hereby appeals to the Superior Court of the State of California, in and for the County of Yuba, from that certain judgment of conviction and sentence of imprisonment for six months in the County Jail suspended under certain conditions, rendered and entered against him and recorded in the above-entitled action by this court on February 17, 1940, and from the whole thereof, on questions of fact and law and each of them. This notice is given in addition to oral notice of appeal given in open court on said 17th day of February, 1940.

Dated: February 19, 1940.

PHILIP ADAMS,
Attorney for Defendant.

[fol. 16] IN THE JUSTICE'S COURT OF MARYSVILLE TOWNSHIP, COUNTY OF YUBA

STATEMENT ON APPEAL AND ORDER APPROVING SAME

I

Defendant having been convicted of a violation of Section 2615 of the Welfare and Institutions Code of the State of California, appeals from said judgment and specifies as grounds on which he intends to rely upon this appeal as follows:

The facts stated in said complaint and the evidence adduced, as shown in the stipulation herein, does not constitute a public offense because the said statute is void as being in conflict with the Constitution of the State of California and the United States Constitution. The grounds on which said statute is unconstitutional are fully set forth in the demurrer and amended demurrer heretofore filed in this action on February 17, 1940, and these said grounds are referred to and incorporated herein as fully as though set out in full.

Appellant further appeals from the order of the court in overruling this demurrer at the time of trial.

II

It is stipulated and agreed to between the parties to this action that the facts involved in this case are as follows:

The appellant, Fred F. Edwards, a citizen of the United States, and a resident of the State of California, left Marysville, California, on December 21, 1939, for Spur, Texas. The object of his trip was to bring his wife's brother, Frank Duncan, a citizen of the U. S. and resident of Texas, back to Marysville. Appellant arrived at Spur, Texas, on December 24, 1939, and learned that Duncan then had no job [fol. 17] and had last been employed by the W. P. A. Appellant at that time learned that Duncan was an indigent person and at all times mentioned herein, appellant knew Duncan to be indigent. It was agreed between Duncan and appellant that appellant would drive Duncan from Spur, Texas, to Marysville, California, in appellant's car. Appellant and Duncan left Spur, Texas, on January 1, 1940, entered California from Yuma, Arizona, on January 3, 1940, and arrived in Marysville on January 5, 1940. At the time Duncan arrived in Marysville he was without funds and lived at appellant's home until he was given assistance by the Farm Security Administration about ten days after his arrival in Marysville. Duncan had no employment after his arrival in California, until after he was given assistance by the Farm Security Administration. Duncan had about Twenty Dollars ($20.00) when he left Spur, Texas; this money was all spent before his arrival in Marysville.

Dated: February 23, 1940.

Joseph L. Keenan, District Attorney of Yuba County, Attorney for Plaintiff. Philip Adams, Attorney for Appellant, Fred F. Edwards.

fol. 18] ORDER

I hereby certify that the above Statement on Appeal has been settled and approved by me this 1st day of March, 1940.

L. J. MULVANY,
Justice of the Peace.

[fol. 19] IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF YUBA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent

vs.

FRED F. EDWARDS, Defendant and Appellant.

MEMO OPINION—Filed June 25, 1940

The defendant and appellant herein was convicted in the Justice Court of a misdemeanor, to wit: a violation of Section 2615 of The Welfare and Institutions Code of this State which reads as follows:

"2615. Willful act a misdemeanor. Every person, firm, or corporation or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor."

The case is before this Court on a stipulation of facts and the question presented the validity of the statute under which the defendant was adjudged guilty.

The issue as to the constitutionality of this statute has been exhaustively argued in the briefs filed, including briefs of amicus curiae, and it appears that the higher courts have not as yet had occasion to pass upon such a statute as the one here involved. In the numerous decisions cited, dicta [fol. 20] is to be found which strongly suggests that such legislation may be violative of the Privileges and Immunities clause of the 14th Amendment in restricting the right of citizens to pass freely from state to state as well as violative of other provisions of the United States Constitution and the California Constitution.

The Court regards the question as close and in view of that, as a trial court, it is constrained to uphold the statute as a valid exercise of the Police Power of the State of California.

The question is of importance to the public, considering times and conditions, and should be finally settled by the higher courts. The present holding of this Court makes possible a further appeal to and review by the courts of higher jurisdiction.

The judgment will therefore be affirmed and it is so ordered.

Warren Steel, Judge.

Dated: June 24th, 1940.

[File endorsement omitted.]

[fol. 21] IN SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF YUBA

JUDGMENT ON APPEAL—Filed June 27, 1940

This cause having been called and coming on for hearing on the statements and records on appeal, on arguments of counsel for both Appellants and Respondent heretofore submitted on written briefs, and being then submitted and taken under advisement, and all and singular the law and premises having been fully considered, and the opinion of the Court herein having been made and filed;

Whereupon it is ordered, adjudged and decreed by the Court that the judgment of conviction and the order overruling the demurrer and amended demurrer of the Justice's Court of Marysville Township, County of Yuba, State of California, in the above-entitled cause, be and the same are hereby affirmed.

Dated this 26 day of June, 1940.

Warren Steel, Judge of the Superior Court.

[File endorsement omitted.]

[fol. 22] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed September 21, 1940

Considering himself aggrieved by the final judgment and decision of the Superior Court of the County of Yuba, State of California, in the above-entitled cause, the petitioner hereby prays that an appeal be allowed to the Supreme Court of the United States.

SUMMARY STATEMENT OF THE CASE

The validity of a statute of the State of California within the meaning and intent of Section 237 (a) of the Judicial Code of the United States is drawn in question upon the ground that said statute is repugnant to the Constitution of the United States. The statute in question was enacted by Chapters 369 and 464, Statutes of California, on June 21, 1937, and is Section 2615 of the Welfare and Institutions Code of California, and reads as follows:

"Section 2615: Wilful Act a Misdemanor. Every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent [fol. 23] person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor. (1937.)

The appellant was convicted in the Justice's Court of Marysville Township, Yuba County, California, of a violation of the foregoing statute, having been charged with and found guilty of bringing his wife's brother from Spur, Texas, to Marysville, California.

This conviction was appealed to the Superior Court of the State of California for Yuba County and that court affirmed the conviction of the Justice's Court. The judgment and decision of the Superior Court was made and entered on the 26th day of June, 1940, and is a final judgment by the highest court of the State of California in which a decision could be had in this proceeding. Said judgment and decision of the Superior Court rejected the contentions of appellant that the statute under which he was charged, and for violation of which he was found guilty, was and is on its face and as applied and enforced in the case of appellant void and repugnant to the Constitution of the United States.

ASSIGNMENT OF ERRORS

The appellant assigns the following errors in the proceedings in this case:

1. The Superior Court erred in its judgment and decision in that it failed to rule and decide that Section 2615 of the Welfare and Institutions Code of California was and is repugnant to the Constitution of the United States and Article [fol. 24] I, Section 8 thereof, as an attempt by the State of California to regulate commerce among the several States.

2. The Superior Court erred in affirming the judgment of conviction because said judgment deprived appellant of his liberty without due process of law, in violation of Section 1 of Amendment XIV of the United States Constitution, in that Section 2615 of the Welfare and Institutions Code of California, on its face and as applied and enforced against the appellant, violates said Section 1 of Amendment XIV of the United States Constitution.

3. The Superior Court erred in its decision and judgment in failing to adjudge Section 2615 of the Welfare and Institutions Code of California, on its face and as enforced and applied to appellant, to be unconstitutional and to deprive appellant of due process of law by denying him freedom of speech, press, movement, residence, and by punishing appellant for assisting another to exercise the latter's constitutional rights or privileges.

4. The Superior Court erred in affirming the judgment of conviction because the statute under which appellant was convicted abridges the privileges or immunities of citizens of the United States in violation of Section 1 of Amendment XIV, and Article IV, Section 2, of the United States Constitution in that, by making it a misdemeanor to bring or assist in bringing into the State of California one known to be indigent, it limits, abridges or denies the right or privilege of unhindered movement from one place to another.

[fol. 25] 5. The Superior Court erred in affirming the judgment of conviction because Section 2615 of the Welfare and Institutions Code of California and appellant's conviction thereunder constituted a denial to him of due process and of equal protection of the laws in violation of Section 1 of Amendment XIV of the United States Constitution, in that under the statute in question one who brings-

or assists in bringing a person known to be indigent into California is guilty of a misdemeanor while neither under said statute nor under any other California statute is it a crime for an indigent person to come into California and no penalty attaches to him upon entrance in California.

Prayer for Reversal

For which errors appellant prays that the judgment of the Superior Court of the State of California, in and for the County of Yuba, dated June 26, 1940, in the above-entitled cause, be reversed, and a judgment rendered in favor of the appellant, and for costs.

Samuel Slaff, Philip Adams, Wayne M. Collins, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 26] Supreme Court of the United States

Order Allowing Appeal and Waiving Cost Bond—Filed September 21, 1940

Whereas, the appellant in the above-entitled matter having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above-entitled matter by the Superior Court of the State of California, in and for the County of Yuba, on the 26th day of June, 1940, and from each and every part thereof; and

Whereas, the appellant having presented his petition for appeal, assignment or errors, prayer for reversal, and statement as to jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided;

Now, therefore, it is ordered that an appeal be, and the same is, hereby allowed to the Supreme Court of the United States from the Superior Court of the State of California, in and for the County of Yuba, in the above-entitled cause, as provided by law; and

It is further Ordered that the clerk of the Superior Court of the State of California, in and for the County of Yuba, shall prepare and certify a transcript of the record, proceedings, and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Supreme Court within sixty days of this date; and

It is further ordered that the filing of a bond as security [fol. 27] for costs on appeal is hereby waived.

Dated this 21st day of September, 1940.

Warren Steel, Judge of the Superior Court of the State of California, in and for the County of Yuba.

[File endorsement omitted.]

[fols. 28–44] Citation in usual form, filed Sept. 21, 1940, omitted in printing.

[fol. 45] In Superior Court of Yuba County

Appellant's Designation of the Record, Proceedings and Evidence To Be Contained in the Record on Appeal—Filed September 24, 1940

Appellant, defendant in the above-entitled action, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in the above-entitled action:

(1) The Justice's Court Complaint
(2) Demurrer of Defendant
(3) Points and Authorities in Support of Demurrer
(4) Amended Demurrer
(5) Copy of Docket in Justice's Court
(6) Notice of Appeal to Superior Court
(7) Statement on Appeal to the Superior Court
(8) The opinion of the Superior Court affirming judgment of conviction in the Justice's Court
(9) Judgment on Appeal in the Superior Court
(10) Petition for Appeal and the Order Allowing said Appeal

(11) Citation on Appeal with acknowledgement of service
(12) Statement as to Jurisdiction
(13) This Designation

Samuel Slaff, Philip Adams, Wayne M. Collins.

[File endorsement omitted.]

[fol. 46] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 47] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO RECORD—Filed December 5, 1940

The appellant states that he believes the entire record to be necessary for the consideration of the case and further states that the points upon which he intends to rely are as follows:

1. The statute under which appellant was convicted (Welfare and Institutions Code of the State of California, Section 2615) is unconstitutional on its face, and is construed and applied in this case, in that it violates Section 8 of Article I of the United States Constitution by assuming to regulate commerce among the several states.

2. The aforesaid statute, on its face and as construed and applied in this case, violates Section I of the XIVth amendment to the Constitution of the United States in that it:

(a) Abridges the privileges and immunities of the citizens of the United States, of whom appellant is one.

(b) Deprives appellant of his liberty without due process of law.

(c) Denies to appellant the equal protection of the laws.

(d) Punishes the exercises of freedom of speech, of press, of movement and of residence.

[fol. 48] (e) Punishes appellant for assisting an indigent in the latter's exercise of his constitutional rights or privileges.

(f) Punishes appellant for bringing or assisting in bringing an indigent, not a resident of California, into California while entrance into California by the self same indigent is no crime under the aforesaid statute or any California statute.

(g) Is so broad and inclusive in its terms as to penalize bringing or assisting in bringing an indigent, not a resident of the state, into California no matter how worthy or proper the purpose, motive or intent may have been in bringing the indigent into California.

3. The aforesaid statute, on its face and as construed and applied in this case, violates Article IV, Sec. 2, sub-division 1 of the United States Constitution.

4. The Superior Court erred in failing to reverse the judgment of conviction of appellant.

Dated, December 4, 1940.

Samuel Slaff, 70 Pine Street, New York, N. Y., Attorney for Appellant.

UNITED STATES OF AMERICA,
City, County & State of New York, ss:

Celia Sheff, being duly sworn, deposes and says: that on the 4th day of December, 1940 affiant enclosed in an envelope the above designation of the record and statement of points upon which appellant intends to rely and sealed said [fol. 49] envelope and addressed the same as follows, to wit: "Joseph L. Heenan, Esq., District Attorney, Yuba County, Marysville, California" and on said day deposited the same so addressed and with the postage thereon fully prepaid in a Post-office box regularly maintained by the United States Government at 70 Pine Street, Borough of Manhattan, City and County of New York.

The affiant is over the age of 21 years.

Celia Sheff.

Sworn to before me this 4th day of December, 1940. John W. Dooley, Notary Public, Bronx County, N. Y.

[fol. 50] [File endorsement omitted.]

[Endorsed on Cover:] File No. 44,937 California, Superior Court, County of Yuba, Term No. 588. Fred F. Edwards, Appellant, vs. The People of the State of California. Filed November 20, 1940. Term No. 588 O. T. 1940.

Exhibit No. 2

BRIEF FOR KERN COUNTY BRANCH OF AMERICAN CIVIL LIBERTIES UNION, AS AMICUS CURIAE

In the Superior Court of the State of California in and for the County of Yuba

People, Plaintiff and Respondent, vs. Fred F. Edwards, Defendant and Appellant

Our sole contention in this case is that the statute for a violation of which appellant was convicted is invalid. Section 2615 of the Welfare and Institutions Code reads as follows:

"2615. Willful act a misdemeanor. Every person, firm, or corporation, or officer, or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor."

Under any possible construction of the statute it is an unlawful interference with foreign commerce. The statute applies to bringing indigents into the State, whether from foreign countries or from other States. The complaint does not specify whether the indigents were brought in from Mexico by way of the Pacific Ocean or from a State adjoining California.

Article I, section 8, subdivision 3 of the Constitution of the United States provides "Congress shall have power—to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes."

In *The State* v. *S. S. Constitution* (42 Calif. 572), the court said:

"Whatever doubts may originally have existed in respect to the concurrent power of Congress and the several States over this subject, it is now well settled that when Congress undertakes by its legislation to regulate a particular branch of our foreign commerce, its authority in this respect is paramount, and is exclusive of all action by the several States on that particular subject."

The court in this case cites and follows the earlier case of *People* v. *Raymond* (34 Calif. 495). In that case a State statute imposing a tax was held unconstitutional because in conflict with Federal legislation upon the same subject. Since the decision of the Steamship Constitution case Congress has fully covered the subject of the admission of undesirable aliens (U. S. Code, title 8, sec. 133).

"The following classes of aliens shall be excluded from admission into the United States: * * * (B) Paupers * * * (I) Persons likely to become public charges" (*Gegiow* v. *Uhl* 239 U. S. 3).

Whatever else may be said concerning the statute, it is difficult to see any weakness in the above argument.

II. THE WORD "INDIGENT" AS USED IN THE STATUTE IS TOO INDEFINITE TO SUPPLY A REASONABLE TEST UNDER POLICE POWER

The dictionaries and the courts have loosely stated that the word "indigent" is synonymous with "pauper," "poor person," or "needy person." For illustrations of the definitions of these terms see the note to *Peabody* v. *Town of Holland* (98 A. L. R. 866). (See also 48 Cor. Jur. 428, Test and Notes.)

The word "pauper" seems to be more definite in its meaning than the word "indigent." However, even the word "pauper" has not a sufficiently definite meaning to guide us in cases of this kind. In the case above cited from A. L. R. it was held that the condition of the person relieved did not of itself establish his right to poor relief, and that he could not be classed as a pauper until relief had been granted by the popular constituted legal authority.

It has been said that adult persons of sound mind cannot be made paupers against their will and to constitute pauper supplies the supplies must have been applied for or received with a full knowledge of their nature (*Bucksport* v. *Cushing* (69 Me. 224); *Sheboygan Co.* v. *Sheboygan Falls* (130 Wis. 93, 109 N. W. 1030).)

Families of absent soldiers in the service of the United States when standing in need of assistance do not incur the disability of paupers by receiving supplies from the cities or towns where such soldiers reside at the time of their enlistment (*Veesey* v. *China* (50 Me. 518), and *Amos* v. *Smith* (51 Me. 602).)

It has frequently been said (see cases last above cited) that one cannot be made a pauper against his will. In this sense the word "pauper" is limited to those entitled to receive and actually receive poor relief, but even in such cases all persons receiving poor relief are not paupers. See two cases last above cited.

The word "indigent" or indigent person includes those who are not paupers. It has been held that a Confederate soldier who from poverty or from age or infirmity is unable to provide for himself is within a statute relating to relief of "indigent persons" although he has a parent or child able and willing to support him and does not come within the statute making provisions for paupers (*Clark* v. *Walton* (137 Ga. 277, 73 S. E. 293)).

In the case of *Goodall* v. *Bright* (11 Cal. App. (2) 540) the court was called upon to construe the phrase "indigent persons in need of hospitalization." It was held that a person who had not sufficient means after providing for those dependent upon him to pay the charges of commercial hospitalization was entitled to hospitalization under the statute.

The word "indigent" occurs several times in the Welfare and Institutions Code. It is nowhere defined. Section 2500 of that code provides as follows:

"2500. Persons to whom duty extends.—Every county and every city and county shall relieve and support all incompetent, poor, indigent persons and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, or by their own means, or by State hospitals, or private institutions."

"Indigent persons" are but one class of those who are to receive relief. In *Gegiow* v. *Uhl* (239 U. S. 3), the Federal immigration statutes provided "for the exclusion of paupers" and persons "likely to become public charges." The aliens arrived at the port of San Francisco intending to go to Portland, Oreg., to seek employment. The Commissioner of Immigration found that due to the congestion of the labor market at Portland the immigrants would probably not secure employment and he therefore held that they were likely "to become public charges." The Supreme Court of the United States ordered the aliens admitted, saying that the conditions of the labor market could not justify a finding that persons were likely to become public charges. The Supreme Court also pointed out that the word "pauper" is to be distinguished from a person likely to become a public charge.

If the State may constitutionally exclude persons on the ground that their admission will injuriously affect the public health, peace, or welfare, the words "indigent persons" are not sufficiently definite to bring the class so described within the class which thus may be excluded.

III. EXCLUSION OF CITIZENS OF THE UNITED STATES FROM ENTERING A STATE IS CONTRARY TO THE DUE-PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

Sir William Blackstone said in his Commentaries of the Law of England, book I, of the Rights of Persons, pages 134 (p. 86 of vol. I, Cooley's edition):

"II. Next to personal security, the law of England regards, asserts, and preserves, the personal liberty of individuals; this personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law."

Willoughby, in his treaties on The Constitution of the United States puts it succinctly as follows:

"By the mere act of taking up residence within a State, which the State cannot prevent, a Federal citizen, ipso facto, becomes a citizen of the State * * * The Federal Constitution fixes that once for all" (vol. I, p. 345).

The carriage of a person from one State to another is interstate commerce whether it be free or for hire (*Cammenetti* v. *U. S.* (242 U. S. 470)).

The Arizona alien-labor law forbidding an employer of eight or more persons to employ over a certain percentage of aliens, was held to violate the fourteenth amendment in *Truax* v. *Raich* (239 U. S. 53).

A statute of the State of Nebraska forbidding the teaching of foreign languages was held to violate the right of teachers to pursue a lawful calling (*Meyer* v. *Nebraska* (262 U. S. 390).

"The liberty mentioned in that amendment [the fourteenth] means the right of the citizen to live and work where he will" (*Allgeyer* v. *Louisiana* (165 U. S. 578, 589)).

In *Hague* v. *C. I. O.* (101 F. (2d) 774, 307 U. S. 496), the mayor of Jersey City objected to citizens of other States agitating in New Jersey. The Federal courts held that citizens of New York had the same right as the citizens of New Jersey.

The Articles of Confederation provided (art. IV):

"The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States."

The founding fathers, however, omitted all exceptions save and except that the Constitution provided for the extradition of fugitives from justice.

The Constitution of the United States was adopted to do away with the petty rivalries and jealousies between the several States. In recent years the spirit of localism has revived. "Trade-at-home campaigns" have become almost as militant as "Buy American." In New York it was proposed that a certain percent of pari-mutual employees must be citizens of New York. John Kieran, whose voice on Information Please is known to every radio addict, commented as follows in the New York Times of March 13, 1940:

"How far can we go in that direction? If it's a fundamentally sound principle it should be carried out in all directions. Get after the lawyers who go to court in New York City but live in New Jersey. Shoo away the writers who sell stories in New York City but live amid the wild reaches of Connecticut. Check upon the big butter and egg men, the salesmen in shoe stores, the butchers and bakers and candlestick makers. If there are too many undesirable aliens from New Jersey working in a big New York department store, heave out the excess of interlopers and throw the president of the concern into the calaboose. If the New York newspaper has an excess of reporters residing in Connecticut, picket the printery.

"After that's settled, the residential employment struggle can get down to ordinances protecting residents of one city against invaders from a nearby city and finally it would be a street-to-street struggle * * *. A man would have to live in the street in which he worked."

In Fortune for February 1940, in an article entitled "The U. S. A. * * * This Enigmatic, Paradoxical, the Greatest Nation on Earth * * *. What Is the Secret of Its Wealth?", the author points out that the vast extent of our country and the absence of economic barriers among the several States and between the different sections have given this country its unique position. "If the political boundaries of our States coincided with the economic boundaries, then the area now known as the United States would be far less potent, far less rich than it is. Then New England would be struggling for food, and in the Northwest an automobile would be as rare as in other agricultural countries that have difficulty accumulating foreign exchange * * *.

"This action is like that within a huge retort in which dissimilar substances mix and compound to create a new substance greater than the sum of its component parts. That new substance is what we know as the U. S. A. This is why the United States has become great * * *.

"And it is significant that all the serious problems that now confront the United States are problems of abundance, not poverty. They are problems of maintaining a high standard of living; of an overwhelming desire to keep democracy and make it work, even at the price of suffering."

We may become annoyed with the influx of the populations of other States. In our annoyance we may slap out at somebody who has contributed to this influx. If, however, we understand the underlying forces in American civilization, we will realize that no petty attempt to punish someone for bringing undesirables into this State will solve any problem. Students of constitutional law will understand that the principles that have actuated America's development as a single nation have now become part of our fundamental law and that our constitutional system will not tolerate the provincial spirit which has stimulated the statute in question, or the inaccurate language in which it has been phrased.

Respectfully submitted.

Kern County Branch of American Civil Liberties Union,
By R. W. Henderson, *Attorney.*

Exhibit No. 3.

STATEMENT AS TO JURISDICTION

Supreme Court of the United States. October Term, 1940. No. 17. *Fred F. Edwards, Appellant*, vs. *The People of the State of California.* Appeal From the Superior Court of the County of Yuba, State of California. Samuel Slaff, Philip Adams, Wayne M. Collins, Counsel for Appellant.

In compliance with Rule 12 of this Court, the appellant herewith submits his statement showing that the appeal in the above-entitled cause is properly before this Court.

Opinion Below

The opinion of the Superior Court of the State of California, in and for the County of Yuba, is not officially reported. A copy of the memorandum of opinion of the Superior Court is attached hereto as Exhibit "A".

Jurisdiction

(1) Statutory Provisions Sustaining Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (a) and Section 237 (b) of the Judicial Code of the United States, as amended by the Acts of February 13, 1925, January 31, 1928, and April 26, 1928.

(2) State Statute Drawn Into Question and Decision as to Its Validity.

The appellant contended in the court below that Section 2615 of the Welfare and Institutions Code of the State of California (under which statute the appellant was charged and for a violation of which he was convicted) was repugnant to the Constitution of the United States in that, on its face and as applied to and enforced against the appellant, said statute in contravention of the Constitution of the United States and the Fourteenth Amendment thereto, deprived him of his liberty and property without due process of law, abridged his privileges or immunities as a citizen of the United States and denied him the equal protection of the laws. He further contended that said statute is repugnant to Article I, Section 8, Subdivision 3, of the Constitution of the United States in that it is an attempt by the State of California to regulate commerce among the several States.

The decision of the court below was in favor of the validity of said statute.

The statute, in its entirety, reads as follows:

> "*Section 2615:* Wilful Act a Misdemeanor. Every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor (1937)."

This statute was enacted by the Legislature of the State of California in Chapters 369 and 464, Statutes of California, on June 21, 1937.

(3) Finality of Judgment.

The judgment forming the basis of the appeal herein is final both in form and in substance, and disposes of all the elements of the controversy in the court below. The judgment affirms the legality of the conviction of appellant, and upholds the sentence imposed on appellant of six months in jail.

(4) Judgment of the Highest Court.

The judgment of the Superior Court of the State of California, in and for the County of Yuba, is that of the highest court in which, under the laws of the State of California, such judgment could be had in the case, and constitutes a final judgment of said court, within the meaning of Section 237 (a) of the Judicial Code (28 U. S. C. A. Section 344).

This case originated as a criminal prosecution against the appellant, in the Justice's Court of Marysville Township, County of Yuba, State of California. The said statute under which the appellant was charged, and for a violation of which he was convicted, provides by its terms that any person violating any provision of said statute shall be deemed guilty of a misdemeanor.

Under the provisions of Section 1425 of the Penal Code of the State of California, jurisdiction for the prosecution of misdemeanor is lodged in the Justice's Court. Under Section 1466 of said Penal Code, an appeal from the Justice's Court lies to the Superior Court.

The California courts have ruled that no appeal or review will lie from a decision by the Superior Court reviewing a decision of a Justice's Court.

Berkeley v. *Cunnyngham*, 218 Cal. 714;
McLean v. *Freiberger*, 215 Cal. 1;
Johnston v. *Wolf*, 208 Cal. 286.

(5) Appeal Timely Taken.

The judgment on appeal by the Superior Court from which this appeal is taken, was entered on the 26th day of June, 1940. On the 21st day of September, 1940, the appellant filed with said Superior Court his petition for appeal, accompanied by his assignment of errors and the within "Statement as to Jurisdiction." On the 21st day of September, 1940, the Honorable Warren Steel, Judge of the said Superior Court, made and entered his order allowing the within appeal to the Supreme Court of the United States.

(6) Constitutional Question Timely and Sufficiently Raised.

The appellant has asserted consistently in the courts below the claim that the statute under which he was charged, and for a violation of which he was convicted, offends against constitutional liberty in that it denies him freedom of speech, press, movement, residence, denies him the equal protection of the laws, deprives him of liberty and property without due process, abridges his privileges or immunities as a United States citizen and further, is an attempt to regulate interstate commerce, all in violation of the Constitution of the United States.

The constitutional question was first raised by demurrer to the complaint which was urged on the occasion of appellant's first appearance before the trial court. (Clerk's transcript, page —.) This plea was filed by the appellant prior to the introduction of any evidence. Said demurrer was overruled and appellant entered his plea of not guilty. The facts in the case were not in dispute and were stipulated to by appellant and appellee in the trial court.

The appellant appealed from the sentence of the Justice's Court to the Superior Court, raising anew the same Federal constitutional issues. (Clerk's transcript, page ——.)

The Superior Court, after expressly considering these constitutional objections which were argued at length in briefs filed on behalf of the appellant, rejected the objections and upheld the statute in its entirety, though urging that the matter, in view of its public importance, should be finally settled by a higher court.

(7) Nature of the Case.

The facts in the case are not in dispute. In the statement on appeal to the Superior Court, it was stipulated between the parties hereto that the facts involved in this case were as follows:

> "The Appellant, Fred F. Edwards, a citizen of the United States and a resident of the State of California, left Marysville, California, on December 21, 1939, for Spur, Texas. The object of this trip was to bring his wife's brother, Frank Duncan, a citizen of the United States and Texas, back to Marysville. Appellant arrived at Spur, Texas, on December 24, 1939, and learned than Duncan then had no job and had last been employed by the W. P. A. Appellant at that time learned that Duncan was an indigent person and at all times mentioned herein, appellant knew Duncan to be indigent. It was agreed between Duncan and appellant that appellant would drive Duncan from Spur, Texas, to Marysville, California, in appellant's car. Appellant and Duncan left Spur, Texas, on January 1, 1940, entered California from Yuma, Arizona, on January 3, 1940, and arrived in Marysville on January 5, 1940. At the time Duncan arrived in Marysville he was without funds and lived at appellant's home until he was given assistance by the Farm Security Administration about ten days after his arrival in Marysville. Duncan had no employment after his arrival in California, until after he was given assistance by the Farm Security Administration. Duncan had about twenty dollars ($20.00) when he left Spur, Texas; this money was all spent before his arrival at Marysville."

The Federal Constitutional Questions Involved are Substantial and a Decision is Necessary to Settle a Federal Question not heretofore Determined by this Court.

The questions involved in this case are whether a State may, consistent with the United States Constitution, under the guise of an indigency law:

(a) Make it a crime for one to assist an indigent person in the exercise of the latter's constitutional rights or privileges.

(b) Regulate commerce among the several States.

(c) Deny one bringing or assisting in bringing an indigent person into California due process and the equal protection of the laws by making that act a crime when the entrance into California by the indigent is no crime under any California statute.

(d) Abridge one's privileges or immunities as a United States citizen by criminally penalizing his movement from State to State.

(e) Deprive one of due process by criminally penalizing his freedom of speech, press and movement and by making an act innocent in nature and character a crime.

A. An indigent person has a constitutional right or privilege to enter California. The basic privileges of citizens of the United States are those which 'arise out of the nature and essential character of the national government' and 'among the rights and privileges of national citizenship * * * are the right to pass freely from State to State,' *Twining* v. *New Jersey*, 211 U. S. 78, 97.
See also:

U. S. Constitution, Article IV, Section 2;
Crandall v. *Nevada*, 5 Wall. 35, 48–9;
The Slaughter-House Cases, 16 Wall. 36;
Williams v. *Fears*, 179 U. S. 270.

Liberty under the Fourteenth Amendment includes freedom of movement and residence, and the right to work where one wills.

> "The liberty mentioned in that amendment (the 14th) means * * * the right of the citizen * * * to live and work where he will * * *."

Allgeyer v. *Louisiana*, 165 U. S. S. 578, 589.

See also:

Meyer v. *Nebraska*, 262 U. S. 390, 399.

Freedom of movement from place to place and freedom of residence is basic not only in the due process portion of Section I of the Fourteenth Amendment but in that portion of the same Section which provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The foregoing not only defines the rights of citizens remaining within the confines of one State but it gives them the right to leave that State, move to another and become citizens of the last.

> "* * * a citizen of the United States can, of his own volition, become a citizen of any State of the Union, by a bona fide residence therein, with the same rights as other citizens of that State."

The Slaughter-House Cases, 16 Wall. 36, 80.

The movement of an indigent person into California and his residence there cannot be prescribed. He has a constitutional right and privilege to enter California. The appellant, therefore, cannot be punished for the alleged crime of assisting him in the exercise of that constitutional right and privilege. *De Jonge* v. *Oregon*, 299 U. S. 353.

B. The statute contravenes the power of the Federal Government to regulate interstate commerce. The carriage of persons from one State to another is interstate commerce whether it be free or for hire. *Gibbons* v. *Ogden*, 9 Wheaton 1; *Caminetti* v. *U. S.*, 242 U. S. 470; *U. S.* v. *Burch*, 226 Fed. 974; *Gooch* v. *U. S.*, 297 U. S. 124. The migration of persons across State lines has had constitutional support from the first. *Gibbons* v. *Ogden*, 9 Wheaton 1.

The effect of this statute is to penalize immigration into California, not by penalizing the immigrant but the one who brings him. And the standard of guilt is the economic condition of the immigrant and the knowledge of that condition by the carrier. A carrier who brings into the State a person who later becomes indigent cannot be compelled to remove him. *City of Bangor* v. *Smith*, 83 Me. 422, 22 Atl. 379. Nor may he constitutionally be held guilty of a crime in bringing him within the State. Economic insulation of geographical or political areas can have no constitutional sanction within the framework of a national government.

Baldwin v. *Seelig*, 294 U. S. 511, 523.

The transit and movement of persons across State boundaries is subject to the regulation of the Federal government under its power over interstate commerce and no State may constitutionally encroach on that power in that field.

County of Mobile v. *Kimball*, 102 U. S. 691;
Gloucester v. *Pennsylvania*, 114 U. S. 196;
The Lottery Cases, 188 U. S. 321;

Hoke v. *U. S.*, 227 U. S. 308;
Caminetti v. *U. S.*, 242 U. S. 470;
Mayor v. *McNeeley*, 274 U. S. 676;
Helson v. *Kentucky*, 279 U. S. 245.

C. It is no violation of law under the California statutes for an indigent to enter the State. But the statute in question makes it a crime to aid an indigent person to come into the State. Certainly a statute which, in substance, renders a person an accessory to a crime when in fact the act of the principal is not made a crime, denies due process and the equal protection of the laws. One who assists another in the exercise of a constitutional right cannot on that account be branded a criminal. *De Jonge* v. *Oregon*, *supra.*

D. The appellant is a citizen of the United States. As a citizen of the United States he has the privilege or immunity of moving freely from one State to another. *Twining* v. *New Jersey*, *Crandall* v. *Nevada*, *Williams* v. *Fears*, and *Allgeyer* v. *Louisiana*, *supra.* The statute in question abridges that privilege or immunity by making such movement criminally punishable when it is in furtherance of the entrance of an indigent person into California; and it thereby raises a Federal question under the Fourteenth Amendment, and also under Article IV, Section 2, Subdivision 1, of the U. S. Constitution.

E. The statute, by fair definition of its terms, prohibits one from encouraging a person whom one knows to be indigent to enter the State. "Bring", among other definitions, means to "cause to come" and "to cause to pass from a place into another". Spoken or written words addressed to a known indigent person which result in inducing him to come to California constitute a crime under the terms of the statute, which would seem to render the statute void, as abridging the liberties of speech and press in violation of the Fourteenth Amendment.

Lovell v. *Griffin*, 303 U. S. 444;
Hague v. *C. I. O.*, 307 U. S. 496.

Not only is a Federal question raised with respect to the denial of freedom of speech and press by this statute but it is also raised by the denial of due process to the appellant in criminally penalizing his movement from one State into another when such movement is under the circumstances of the instant case.

In addition, the act with which appellant was charged cannot constitute a crime. The statute ignores motive, purpose, or intent. It is arbitrary and unreasonable in that an act, innocent in nature and character is made a crime. Nor can statutory fiat create a crime from the act of assisting another in the exercise of the latter's constitutional rights. *De Jonge* v. *Oregon*, *supra.* The Federal question is thus raised of the denial to appellant of due process and equal protection of the laws.

California obviously seeks here to prevent indirectly what it cannot prevent directly; it attempts to prevent indigent persons from taking up residence in California by intimidating those who would assist them. There can be no legal objection to a reasonable requirement of a fixed period of residence within the State as a pre-requisite to eligibility for relief. That State may not, however, bar one whom it may consider a potential relief recipient from entrance; and similarly it may not make him who aids his entrance a criminal. This case presents a question which affects a most basic of American rights; the right of American citizens to move without let or hindrance throughout the country. So peculiarly national a question calls for determination by the one court which speaks not for one State or section but for the whole country.

CONCLUSION

WHEREFORE, it is respectfully submitted that the appellant in the above entitled cause comes properly within the jurisdiction of this Court.

SAMUEL SLAFF,
PHILIP ADAMS,
WAYNE M. COLLINS,
Attorneys for Appellant.

Exhibit "A".—Opinion Delivered by Superior Court of the State of California, in and for the County of Yuba, Upon Rendering of Judgment of June 26, 1940

No. 621

The People of the State of California, *Plaintiff and Respondent,*

vs.

Fred F. Edwards, *Defendant and Appellant*

Memo. Opinion

The defendant and appellant herein was convicted in the Justice Court of a misdemeanor, to wit: a violation of Section 2615 of The Welfare and Institutions Code of this State which reads as follows:

"2615. Willful act a misdemeanor. Every person, firm, or corporation or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor."

The case is before this Court on a stipulation of facts and the question presented the validity of the statute under which the defendant was adjudged guilty.

The issue as to the constitutionality of this statute has been exhaustively argued in the briefs filed, including briefs of amicus curiae, and it appears that the higher courts have not as yet had occasion to pass upon such a statute as the one here involved. In the numerous decisions cited, dicta is to be found which strongly suggests that such legislation may be violative of the Privileges and Immunities clause of the 14th Amendment in restricting the right of citizens to pass freely from state to state as well as violative of other provisions of the United States Constitution and the California Constitution.

The Court regards the question as closed and in view of that, as a trial court, it is constrained to uphold the statute as a valid exercise of the Police Power of the State of California.

The question is of importance to the public, considering times and conditions, and should be finally settled by the higher courts. The present holding of this Court makes possible a further appeal to and review by the courts of higher jurisdiction.

The judgment will therefore be affirmed and it is so ordered.

(Signed) Warren Steel,
Judge.

Dated: June 24th, 1940.

(Endorsed) Statement as to Jurisdiction. Filed Sep. 21, 1940. W. M. Strief, Clerk, by A. Conley, Deputy Clerk.

Exhibit No. 4.

Supreme Court of the United States. October Term, 1940. No. 17. *Fred F. Edwards, Appellant,* vs. *The People of the State of California.* Samuel Slaff, Counsel for Appellant. Philip Adams, Wayne M. Collins, Of Counsel. Dated, New York, February 17, 1941.

APPELLANT'S BRIEF

I. Opinion Below

The opinion of the Superior Court of Yuba County, California, appears at pages 10–11 of the record; it is not officially reported.

II. Jurisdiction

Jurisdiction of this Court is invoked under Section 237 (a) of the Judicial Code, as amended (U. S. C. Title 28, Section 344 (a)). The judgment of the Superior Court of Yuba County is of the highest court in California in which, under the laws of that State, judgment could be had in this case.

III. Statement of the Case

The facts were stipulated (R. 9) on the appeal below as follows:

> "The Appellant, Fred F. Edwards, a citizen of the United States and a resident of the State of California, left Marysville, California, on December 21, 1939, for Spur, Texas. The object of this trip was to bring his wife's brother, Frank Duncan, a citizen of the United States and resident of [1] Texas, back to Marysville. Appellant arrived at Spur, Texas, on December 24, 1939, and learned that Duncan then had no job and had last been employed by the WPA. Appellant at that time learned that Duncan was an indigent person and at all times mentioned herein, appellant knew Duncan to be indigent. It was agreed between Duncan and appellant that appellant would drive Duncan from Spur, Texas, to Marysville, California, in appellant's car. Appellant and Duncan left Spur, Texas, on January 1, 1940, entered California from Yuma, Arizona, on January 3, 1940, and arrived in Marysville on January 5, 1940. At the time Duncan arrived in Marysville he was without funds and lived at appellant's home until he was given assistance by the Farm Security Administration about ten days after his arrival in Marysville. Duncan had no employment after his arrival in California, until after he was given assistance by the Farm Security Administration. Duncan had about twenty dollars ($20.00) when he left Spur, Texas; this money was all spent before his arrival at Marysville."

Edwards was found guilty (R. 7) of violating Section 2615 of the Welfare and Institutions Code of California which holds:

> "Wilful Act a Misdemeanor. Every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor." (R. 12)

A sentence of six months was suspended (R. 7). On appeal the Superior Court affirmed the conviction (R. 11).

IV. Specification of Errors

The appellant assigns the following errors in the record and proceedings below:

1. The statute under which appellant was convicted (Cal. Welfare and Institutions Code, Section 2615) is repugnant to the Commerce Clause (Section 8 of Article I) of the Constitution of the United States.

2. Section 2615 of California's Welfare and Institutions Code is void on its face, is in violation of Section 1 of the Fourteenth Amendment and operates to deprive appellant of liberty without due process of law and to deny him the equal protection of the laws.

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[1] The words "resident of" were omitted through typographical error from the statement of facts on page 5 in the Statement as to Jurisdiction.

POINT I

THE CALIFORNIA STATUTE VIOLATES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION

The interstate movement of people in the United States is no latter-day phenomenon. It is a characteristic of our population as old as the nation itself. It is the basic factor which has given the United States the physical size it now possesses. It has been the dominant factor in the development of a broad national culture resulting from the blending and intermixture of diverse regional and state cultures. It underlies our development as a nation rather than as a group of separate parochial provinces.

The American people still possess—as they always have—a quality of extraordinary geographic mobility.[2] The twentieth century in this country has witnessed simultaneous and parellelling west-east and east-west migrations and a less sharp but definite movement between the north and south.[3] This characteristic American mobility has increased steadily since 1890,[4] so that by now the resident of almost any state in the Union is little more a state-man than was Defoe's "True-born Englishman" an Englishman. By 1930 every state except California had lost by migration more than 15% of the population born within it and every state, with five exceptions,[5] had more than 100,000 residents of other state origin. Twenty-three per cent of this country's native population—twenty-five million, of whom twenty-two million were native whites—were then living outside the states in which they were born.[6]

Internal migration in the United States has been well epitomized as "a process of social osmosis".[7] Just as the impelling force in the osmotic process is the factor of pressure, so, too, the fundamental driving force in the migration process is the pressure of differences—or at least the apparent differences—in the economic opportunity of diverse sections of the nation. For it is undeniable that the underlying bases of internal migration are predominantly economic.[8]

The economic emphasis may shift from one of "pull" to one of "push" from period to period—as witness the contrast between the 'twenties and the 'thirties—but the fundamental economic motive remains. During the 'twenties people migrated, not necessarily because of an impelling need to better themselves but because they were attracted by places of greater economic opportunity, the pull of greener pastures. By contrast, the basic force in the movement of the 'thirties was the necessity to find employment—the push from areas more severely stricken than others by the strains imposed on the national economy.[9] The droughts, mechanized farm cultivation, the cumulative effects of low cotton prices in the post-war period and in 1932 were all strong factors in the population movement of the 'thirties to California and the west.[10] Coupled with these were: general unemployment; regional differences in employment, wage levels and patterns of seasonal labor requirements; mechanization of agriculture as well as industry; soil erosion; and similar causes.[11] In addition the pressure resulting from the circumstance that the highest birth rates occurred in the regions where economic opportunity was lowest,[12] together with the damming up of the normal flow of population in the earlier period of the depression because of the fears of the risk involved in making any move ultimately caused wide population movements.[13] Due to the depression and now as a consequence of the increased development of industry because of the defense program the movement of the impoverished is greater than ever before.[14]

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[2] Blankenship, Charles F. and Safier, Fred, *A Study of Medical Problems Associated with Transients*, 18, U. S. Public Health Service, Public Health Bulletin No. 258; Webb, John N. and Brown, Malcolm, *Migrant Families*, 126, WPA Division of Social Research, Monograph XVIII, 1938.

[3] Blankenship and Safier, *op. cit.*, 18.

[4] National Resources Committee (1938), *The Problems of a Changing Population*, 112.

[5] Maine, Vermont, Delaware, Utah, and Nevada.

[6] National Resources Committee, *op. cit.*, 85; Ryan, Philip E., *Migration and Social Welfare* (Russell Sage Foundation, 1940), 24.

[7] Thompson, Warren S., *Research Memorandum on Internal Migration in the Depression*, 7, Social Science Research Council.

[8] Ryan, *op. cit.*, 12; Webb and Brown, *op. cit.*, 4, 5: A study of 4,247 migrant families indicates that 69% migrated because of varying types of economic distress at home, 25% because of personal distress—and in this 25% were 11% who migrated because of ill health.

[9] Webb and Brown, *op. cit.*, 4, 5; Webb, John N., *The Transient Unemployed*, 58–59, WPA Division of Social Research, Monograph III, 1935.

[10] Webb, John N., *The Transient Unemployed*, 58; Webb and Brown, *op. cit.*, c. 1; *Migratory Labor: A Social Problem*, 19 Fortune, No. 4, p. 94; Taylor Paul S. and Rowell, Edward J., *Refugee Labor Migration to California, 1937*, Monthly Labor Review of the Bureau of Labor Statistics, U. S. Dept. of Labor, August 1938 issue.

[11] *Preliminary Report of the Select Committee to Investigate the Interstate Migration of Destitute Citizens*, House of Representatives, 76th Cong., 3rd Sess., p. 27. (Hereafter cited as "Select Committee, Preliminary Report.")

[12] House of Representatives, *Interstate Migration: Hearings Before the Select Committee to Investigate the Interstate Migration of Destitute Citizens*, 76th Cong., 3rd Sess., Part I, New York City Hearings (hereafter cited as "Select Committee, Hearings, Part I"), Testimony of Dr. Frank Lorimer, p. 25.

There is, of course, nothing inherently undesirable about migration. The history of our nation bears witness to that. On the contrary, serious damage would result and the entire economic structure of the country would be adversely affected to a marked degree if the flexibility resulting from the mobility of labor were destroyed or seriously impaired.[15]

It is necessary to evaluate California's statute in the light of the effect of that statute and similar statutes on the national economy in order to come to a valid conclusion as to whether the interstate commerce involved in the movement of persons is a matter which a state may validly regulate as has California. For if California may legislate in this fashion, the same power must be lodged in each of the other forty-seven states. For the purpose of such evaluation, it is well to examine the general categories into which may be grouped those who participate in interstate movements of population.

In the main, present day migrants fall generally into two classes; the migratory-casual workers who furnish the mobile labor supply necessary in the national economy and the transient unemployed.[16] There is a small class of economically self-sufficient persons who move from one part of the country to another for reasons of comfort, health, social prestige, etc., as well as a larger number of more or less economically self-sufficient persons who move regularly in interstate commerce, as "white-collar" commuters, travelling salesmen, professionals, business executives, etc. The California statute under consideration is not aimed at such persons; hence it is unnecessary to consider their problems—although the unequal status of "indigents" raises the question of equal protection.

Each of the two classes of migrant has definite characteristics as well as a special niche in the national economy.

"The migratory-casual worker is a necessary adjunct to those highly seasonal or intermittent industries that cannot, or will not, support a resident labor force." [17] The wheat harvest, from central Texas to the Canadian border and west to the Pacific; the apple harvest in Oregon and Washington; the citrus fruits in the Southwest and Florida; the prunes, peaches and other soft fruits along the Pacific Coast; the berries of the Mississippi Valley and on Puget Sound; the lettuce, peas, beans, melon, spinach, onion and similar truck crops in the Southwest, in Washington and along the Eastern Seaboard; the sugar beets of Colorado, California, Montana and Michigan; the cotton of Texas, Oklahoma, Arizona and California; railroad right-of-way maintenance and construction; construction of dams, levees, roads, tunnels and power and pipe lines; the oil and gas fields; the logging industry—these are among the most important of productive processes which require a mobile labor supply, the migratory-casual worker.[18] "On the economic side, the migratory-casual worker is the result of (1) the progression of the seasons, which provides an irregular sequence of employment over a large area, and (2) the pool of unemployment, which rises and falls with business conditions, but which is never completely drained." [19]

Interstate migration is a clearly defined characteristic of the migratory-casual worker [20]—with approximately equal mobility among agricultural, industrial and combination agricultural and industrial workers.[21] Set out in the Appendix are three maps showing routes of travel of one hundred typical agricultural migratory-casual workers and one hundred typical industrial laborers of the same type.[22] The interstate movement characteristic of these workers is clearly evident from these maps.

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[13] *Ibid.*, p. 29.

[14] Select Committee, Preliminary Report, *op. cit.*, 19.

[15] Ryan, *op. cit.*, 31; for example, if there were no migration between 1930 and 1960, the natural increase in population in the South and in Utah, Idaho, and the Dakotas would be 50%. The resultant effect on the economy of those areas would be disastrous since they are definitely unable to support such an increased population. Select Committee, Hearings, Part I: *Op. cit.*, 24—Lorimer.

[16] Coyle, David Cushman, *Depression Pioneers*, 5–6, WPA Social Problems, No. 1 (1939).

[17] Webb, John N., *The Migratory-Casual Worker*, 1, WPA Division of Social Research, Monograph VII, 1937. Select Committee Hearings, Part I, *op. cit.*, 216—Testimony of David C. Adie, Commissioner of Social Welfare, New York State.

[18] Webb, John N., *The Migratory Casual Worker*, 5–7.

[19] *Ibid.*, XV–XVI.

[20] *Ibid.*, 24.

[21] *Ibid.*, 24.

[22] *Ibid.*, 28, 29, 32.

The transient unemployment—the other characteristic American migrant—make up the bulk of the approximately 3,000,000 people who move annually from farms to towns and cities and vice versa, the more than 1,000,000 farm families which move from one farm to another each year,[23] and the large number who move principally between urban centers. Over two million workers, three-quarters of whom are occasional migrants and twenty-five percent habitual migrants (the latter are principally migratory-casual laborers) cross state lines yearly to work or in the search for employment;[24] if the non-working members of the family were included in the total the number would be even greater. Even those who have been employed for substantial periods of time find it necessary to cross state lines to obtain further employment.[25] The routine, customary population mobility of sound economic periods becomes "mobility in trouble" in a period of depression.[26] Both, of course, constitute interstate commerce.

The transient unemployed are largely composed of families seeking permanent settlement.[27] These people have not migrated in search of relief payments.[28] As a class, they are loath to accept relief and "the vast majority of them are anxious to avoid being supported at public or private expense."[29] In fact their dislike of accepting it is often a contributing factor in inducing migration.[30]

Illustrative of the characteristics of those migrants who enter California are the facts that of 289,299 migrants "in need of manual employment" coming into the state by motor vehicle via Border Stations between June 16, 1935 and March 1, 1938, 242,898, or over 80%, entered as members of family units.[31] They averaged over four persons per motor vehicle.[32] The great majority are of native, white stock;[33] many are descendants of the oldest families in the Eastern and Southeastern states.[34]

Migrants, as a class, have in the main more than the average amount of initiative, [35] are "above the average family on relief",[36] and "frequently were among the most enterprising and energetic members of their former communities." [37] Their economic heads are significantly younger than those of the general population or resident relief families.[38] Those California has received have been "ambitious and energetic",[39] anxious and able to work.[40] The occupational structure of those coming into California has corresponded closely to the occupational composition and numerical distribution of the entire population.[41] Fifty-four percent of those migrant families moving to California had close personal contacts there (relatives, friends, etc.), and almost another 20% had other definite contacts; [42] 22% selected California in the hope that their health would benefit from the climate.[43]

These, then, comprise the bulk of the people who, being non-residents of California, come into that state. The act of bringing or assisting in bringing almost any one of these people into California has been made a crime by that state.[44]

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[23] Taylor, Carl C.; Wheeler, Helen W.; and Kirkpatrick, E. L., *Disadvantaged Classes in American Agri culture*, U. S. Department of Agriculture, p. 5.

[24] Ryan, *op. cit.*, 25.

[25] Select Committee Hearings, Part I, *op. cit.*, 216–217—Adie.

[26] Webb and Brown, *op. cit.*, XXI; 42–43.

[27] House of Representatives: *Hearings Before the Select Committee to Investigate the Interstate Migration of Destitute Citizens;* Vol. I of the Transcript of the Committee's San Francisco Hearings (hereafter referred to as Select Committee San Francisco Transcript), Testimony of Gov. Culbert L. Olson of California, Sept. 24, 1940, p. 75. Select Committee Hearings, Part I, *op. cit.*, 340.

[28] Webb, *The Transient Unemployed*, 63: Inadequate relief accounted for but one to three percent of depression migration among unattached persons and two to four percent among heads of family groups. Westfield, Albert, *Michigan Migrants*, WPA Division of Research (March, 1939), 2–3; Webb and Brown, *op. cit.*, 51; Coyle, *op. cit.*, 5–6.

[29] Select Committee, Preliminary Report, *op. cit.*, 9; see also; Coyle, *op. cit.*, 5–6.

[30] Select Committee, Preliminary Report, *op. cit.*, 28.

[31] Taylor and Rowell, *Refugee Labor Migration to California*, 1937, *op. cit.*, Table 3, p. 6.

[32] *Ibid.*

[33] *Ibid.*, 5; Select Committee, Preliminary Report, *op. cit.*, 9; Select Committee Hearings, Part I, *op. cit.*, 340—Lett; Webb and Brown, *op. cit.*, XXVII.

[34] Select Committee, Preliminary Report, *op. cit.*, 9.

[35] Select Committee, Preliminary Report, *op. cit.*, 9.

[36] Webb and Brown, *op. cit.*, 126.

[37] Ryan, *op. cit.*, 10.

[38] Webb and Brown, *op. cit.*, 97–98.

[39] Coyle, *op. cit.*, 6.

[40] Webb and Brown, *op. cit.*, cc. V, VI; A study of 5,426 economic heads of migrant families indicates 56% employable, 33% employable with handicaps, and only 11% unemployable, of whom more than half were women with dependent children requiring their full time.

[41] Select Committee, San Francisco Transcript, Testimony of Varden Fuller, U. S. Bureau of Agricultural Economics, p. 122.

[42] Webb and Brown, *op. cit.*, 18–19.

[43] *Ibid.*, 21.

[44] It should be noted that while the law, *on its face*, is aimed only at the one who brings an indigent into the state or assists in bringing in such a person, it is actually aimed at the indigents themselves. As noted above (p. 10) most of them come in as members of family groups in cars driven by one of them. A law which makes the driver of the car a criminal under those circumstances is certainly effectively aimed at all the passengers as well.

For it is clear that practically all migratory-casual labor and transient-unemployed fall within the classification of "indigent persons".

The term indigent is defined [45] as:

1. *Wanting; lacking; void; free; destitute.*
2. *Destitute of property or means of comfortable subsistence; needy; poor; in want; necessitous. Syn.—impecunious, penniless, poverty-stricken.*

The term does not necessarily involve the receipt of public relief; that is an occasional incident but not a requisite of the status. It includes employables,[46] does not exclude the possession of some property [47] and encompasses that portion of the laboring population which is self-supporting only when employed.[48]

The migratory-casual worker "is on the margin of subsistence most of the time." [49] The yearly net earnings [50] of the migratory-casual workers studied by Webb establishes clearly the "indigence" of this necessary part of the nation's labor supply. Migratory-casual agricultural workers averaged annual earnings of $110 in 1933 and $124 in 1934; industrial migratory-casual workers averaged $257 in 1933 and $272 in 1934, while workers who engaged in both agricultural and industrial employment averaged $223 in 1933 and $203 in 1934.[51]

With respect to the main body of migrants, "it is from the ranks of those at or near the relief level that the bulk of migration arises".[52] Yet this group represents only a small fraction of the great portion of the American population whose economic condition places them within the category of "indigents".

One-third of all American families and single individuals during 1935–1936 received annual incomes of less than $780; [53] the average income of this group amounted to $471 a year. [54] The next third of America's families and individuals had incomes ranging from $780 to $1450.[55] The average income of this group was $1,076 and the average annual income of the foregoing two-thirds of American families and single individuals was $773.50. Since "with the masses of the population the income derived from investments is negligible",[56] by definition and cold economic fact *a goodly portion of even America's employed population* and a major portion of her migrants and unemployed are indigent.

The existence of the statute in question and the conviction of Edwards by a state which casts a wide net for prosperous visitors [57] poses sharply the question whether those whose only crime is to be poor and needy are to be denominated "outlaws of commerce" [58] and barred by a state from interstate transportation and movement.

There can, of course, be no question that the passage of persons from state to state constitutes interstate commerce.[59] The protection of their freedom of passage is readily found in the commerce clause [60] whether they be carried by common carrier or otherwise and whether free or for hire.[61]

Whether this statute arises from a fear that economic dislocation may be aggravated by increased cost to the state for relief for some indigents [62] or from other reasons, California may not constitutionally build a Chinese wall to insulate itself now from the people of America whose successive influxes[63] have resulted in her position.[64] The purpose of Section 2615 of California's Welfare and Institutions Code, like the purpose of any act, however framed, may be found in its natural and reasonable effect.[65] The natural and reasonable effect of this statute is to deter, impede and bar the movement of indigent persons into California and when in that state, to compel their removal at such times as it pleases the authorities. California has here attempted to set up a statutory border patrol which differs in form but not in principle from the physical border patrols previously established by that state, as well as by Florida and Colorado.[66] It is obvious that California authorities have at hand "an instrument of compulsion peculiarly effective as against the poor and the ignorant, its most likely victims." [67] Speaking of a similar power Freund says: "Such a power (the power to remove persons likely to become chargeable), in addition to being liable to the grossest abuse, is so inconsistent with the freedom of migration in pursuit of livelihood, that it can probably not be maintained under our constitutional limitations." [68]

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[45] *Webster's New International Dictionary, Second Ed.* (Unabridged) 1935, G. & C. Merriam Co., Publishers. See also *Funk & Wagnall's New Standard Dictionary of the English Language (1936)*. "Indigent (1) Destitute of property or mans of comfortable subsistence; needy; poor (2) lacking; wanting." See also: *Black's Law Dictionary, Second Edition.*

[46] *Cal. Welfare & Institutions Code*, Sec. 2505 (Deering, 1937); R. 9.

[47] *Cal. Welfare & Institutions Code*, Sec. 2600, 2601; R. 9; *In re Hybart*, 119 N. C. 359.

[48] *Goodal* v. *Brite*, 11 Cal. App. (2d) 540, 549; *City and County of San Francisco* v. *Collins*, 216 Cal. 187, 190; *Calkins* v. *Newton*, 36 Cal. App. (2d) 262, 265; *Peo.* v. *Supervisors*, 121 N. Y. 345, 350; *Lander County* v. *Humboldt County*, 21 Nev. 415, 417–18.

[49] Webb, *The Migratory-Casual Worker*, X.

[50] Net earnings are earnings after such deductions, or their equivalent, as are made by employers for housing, meals, transportation, etc.

[51] Webb, *The Migratory-Casual Worker*, XVII.

[52] Select Committee, Preliminary Report, *op. cit.*, 28.

[53] National Resources Committee, *Consumer Incomes in the United States—Their Distribution in 1935–36*, 8–9.

[54] *Ibid.*, 9.

[55] *Ibid.*, 9.

[56] Leven, Moulton and Warburton, *America's Capacity to Consume*, 26.

[57] In 1939 out-of-state tourists spent $193,000,000 in California; the state treasury receives over $10,000,000 annually in taxes from travelers and tourists. Select Committee San Francisco Transcript, *op. cit.*, testimony of Gov. Culbert L. Olson, of California, p. 87.

[58] *Hipolite Egg Co.* v. *U. S.*, 220 U. S. 45, 58.

[59] *Gibbons* v. *Ogden*, 9 Wheat. 1; *Hoke* v. *U. S.*, 227 U. S. 308; *Gooch* v. *U. S.*, 297 U. S. 124; *U. S.* v. *Miller*, 17 F. Supp. 65; *Covington and Cincinnoti Bridge Co.* v. *Kentucky*, 154 U. S. 204.

[60] Justice Stone, dissenting in *Colgate* v. *Harvey*, 296 U. S. 404, 446.

[61] *Caminetti* v. *U. S.*, 242 U. S. 470; *U. S.* v. *Burch*, 226 Fed. 974.

[62] California has raised its residence period and three years residence is now required in order to be eligible for relief. *Welfare & Institutions Code*, Sec. 2555a (Deering, 1937). The Governor of California has testified that "Pressure groups in this state have seized upon the migrant problem as a means of lowering all relief standards." Select Committee San Francisco Transcript, *op. cit.*, testimony of Gov. Culbert L. Olson, p. 85.

A natural tendency of this statute is to intimidate, under threat of criminal prosecution, not only one who would or might otherwise transport an indigent migrant, but also the migrants themselves.[69] Its consequence is thus frequently to leave the latter substantially helpless to move with the effect of compelling them to remain at their place of origin where employment for them is wanting and opportunity lacking. If the movement of indigent migrants *into* a state may be barred or impeded because of fear of the creation of a potential burden which may subsequently fall on the residents of that state, or for any such reason, why then may not migration *out of* a state be restrained where the depopulation thus occasioned would increase the burden of governmental indebtedness to those remaining or might have similar results.[70] Certainly there is no valid distinction whatever between the two types of action. If the principle of freezing of population in areas of origin is constitutionally sound, there is legal sanction for the growth of an economic condition of virtual peonage, chaining people to that part of the land where accident of birth has first placed them.

In its practical operation this statute—by impeding the free movement of employables across state lines—interposes a barrier against the competition of the labor of non-residents with that of residents. This Court has but recently held: "The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businesses, whatever may be the ostensible reach of the language." [71] Certainly the absence of capital cannot legitimately serve to fetter the indigent merchant of his own labor or deny him a regional or national market for his services.[72]

Poverty is not a "moral pestilence".[73] These migrants are not improper subjects of commerce; [74] these upon whom California seeks to place a statutory quarantine of "untouchable" are not contagiously diseased. Their only illness is an economic one. If this law were valid why could not California constitutionally require one who entered the state to have $100, $1,000 or $10,000—or a minimum income? Why could not a carrier be required to assure itself of the financial solvency of its passengers before transporting them to the state or remove them from the state in the event of their impoverishment subsequently.[75]

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[63] In the period 1920–1930 two and a quarter million people were added to California's population due principally to migration from other states. *Hearings Before a Subcommittee of the Committee on Education and Labor*, U. S. Senate, 76th Cong., 3rd Sess., Part 59, California Agricultural Background, Exhibit 9366, p. 21861. Of its five and a half million people, only two million were born within the state, two and a half million were born elsewhere in the United States and a million were born abroad. National Resources Committee (1938), *The Problems of a Changing Population*, 108.

[64] As of 1929 California had the highest per capita income of farm population in the United States, the fifth highest per capita income of non-farm population, the fourth highest over-all per capita income in the country, and the fourth highest aggregate income in the nation. Leven, Moulton and Warburton, *America's Capacity to Consume*, 40–48.

[65] *Henderson* v. *Mayor*, 92 U. S. 259, 268; *Bailey* v. *Alabama*, 219 U. S. 219, 244; *Truax* v. *Raich*, 239 U. S. 33, 40.

[66] National Resources Committee, *The Problems of a Changing Population*, 88; McWilliams, Carey, *Factories in the Field*, 310–311; *New York Times:* Feb. 5, 1936, p. 2, col. 5; Feb. 8, 1936, p. 18, col. 3; Feb. 9, 1936, Sec. 4, p. 11, col. 6; Apr. 19, 1936, Sec. 2, p. 2, col. 6; Oct. 25, 1936, Sec. 4, p. 10, col. 8.

The Statute is a convenient method of forcing the return of an entire group of migrants by arresting and sentencing the driver of the automobile and then suspending sentence on condition that all leave the state.

New York Times: Nov. 5, 1939, p. 1, col. 3; "In the first court action to rid Kings County of indigents from the midwest a penniless family of eight was ordered to return to Missouri.

William George, cotton picker of Corcoran, Calif., chose to return to Arbyrd, Mo., with his widowed aunt and her six children rather than serve a six months' jail sentence.

California law makes it a misdemeanor to bring indigents into the State."

[67] *Bailey* v. *Alabama*, 219 U. S. 219, 245.

[68] Freund, Ernst, *The Police Power* (1904), 258.

[69] See Footnote 44, p. 12.

[70] Freund, *op. cit.*, 530.

[71] *Best and Co., Inc.* v. *Maxwell*, 85 L. ed. Adv. Ops. 1940–1941, 274, 275.

[72] *Baldwin* v. *Seelig*, 294 U. S. 511, 527.

[73] *Mayor of New York* v. *Miln*, 11 Pet. 102, 142.

[74] *Asbell* v. *Kansas*, 209 U. S. 251; *Baldwin* v. *Seelig*, *supra*, 525.

"Migration is not only a constitutional right of every American citizen; it is an economic necessity in the American economic system. This country is an economic unit with a predominantly national market. Industries, investments, goods, and labor respond to this economic and legal fact by crossing State lines at will." [76] Migration is essential to relieve potentially disastrous population pressures.[77] Extensive migration is necessary to alleviate effectively the chronic depression of the farming population of the Southeast.[78] A mobile labor supply is a requirement of industries throughout state after state which cannot support a resident labor force.[79] The national defense program requires [80] fluidity of movement of workers from state to state; some migration to California has already been absorbed by national defense [81] but the program will require more.[82] The entire subject of migration and its problems is national in scope.[83]

Interstate trade, the redistribution of population from marginal and submarginal areas, the right to migrate in pursuit of livelihood, freedom of opportunity, freedom of passage from state to state, the needs of national industry, the requirements of national defense—these are not merely local, internal affairs and matters on which the state may have some power to affect interstate commerce.[84] These are matters affected with a vital national interest; they are the very fabric of national unity. Whether by the statute in question California seeks to bar the passage of indigents directly or indirectly her action in either event invades the power of the national government over interstate commerce.

If California is to be permitted to use the economic condition of the indigent migrant and the knowledge of that condition as a standard of guilt and a lash to drive him away and to drive away aid from him and thus immobilize and set up a barrier against the non-resident indigent, every state in the Union may do likewise and America may be converted into forty-eight economic concentration camps. But geographic and economic disinheritance by any state in this nation of any person or group whose basic crime is economic kinship with millions of other Americans has not yet achieved the dignity of constitutional benediction. "Let such an exception be admitted, and all that a state will have to do in times of stress and strain is to say that its farmers and merchants and workmen must be protected against competition from without, lest they go upon the poor relief lists or perish altogether. To give entrance to that excuse would be to invite a speedy end of our national solidarity. The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." [85]

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[75] *City of Bangor* v. *Smith*, 83 Me. 422.

[76] Select Committee Preliminary Report, *op. cit.*, 18: Chairman John H. Tolan, quoting with approval Dr. Rupert Vance. See also: Ryan, *op. cit.*, 26.

[77] Select Committee Hearings, Part I, *op. cit.*, 24—Lorimer.

[78] National Resources Committee, *The Problems of a Changing Population*, 113.

[79] Webb, John N., *The Migratory-Casual Worker*, *op. cit.*, 1.

[80] Select Committee, Preliminary Report, *op. cit.*, 11.

[81] Select Committee San Francisco Transcript, Vol. I, *op. cit.*, Testimony of Varden Fuller, Associate Agricultural Economist, U. S. Bureau of Agricultural Economics, p. 127 *et seq.*

[82] Select Committee Preliminary Report, *op. cit.*, 11.

[83] *Ibid.*, 16, 17; Select Committee Hearings, Part I, *op cit.*. 2, 219, 380; Select Committee San Francisco Transcript, Vol. I, p. 95—Olson. Ryan, *op, cit.*, 90: "The following federal agencies, among others, have an interest in the problems growing out of population mobility: Department of Agriculture: Bureau of Agricultural Economics, Farm Credit Administration, Farm Security Administration, Federal Surplus Commodities Corporation, Forest Service, Soil Conservation Service; Department of Commerce: Bureau of the Census; Department of Justice: Bureau of Parole, Bureau of Prisons; Department of Labor: Bureau of Labor Statistics, Children's Bureau, Division of Labor Standards, Wage and Hour Division, Women's Bureau; Executive Office of the President: Central Statistical Board, National Resources Planning Board (formerly National Resources Committee); Federal Works Agency: United States Housing Authority, Works Projects Administration (formerly Works Progress Admin.); Federal Security Agency: National Youth Administration, Office of Education, Public Health Service, Social Security Board, United States Employment Service; Interdepartmental Committee to Coordinate Health and Welfare Activities.

[84] *Cooley* v. *Board of Wardens*, 12 How. 299; *Baldwin* v. *Seelig*, 294 U. S. 511; *Leisy* v. *Hardin*, 135 U. S. 100.

[85] *Baldwin* v. *Seelig*, 294 U. S. 511, 523.

POINT II

THE STATUTE IS VOID ON ITS FACE AND OPERATES TO DEPRIVE THE APPELLANT OF LIBERTY WITHOUT DUE PROCESS OF LAW AND TO DENY HIM THE EQUAL PROTECTION OF THE LAWS

No argument has been made or can be made by appellee that the act of the appellant in assisting Duncan presents any greater problem to the state than Duncan's act in coming into California. The statute is patently designed to accomplish by indirection that which the state has doubts as to its ability to accomplish directly.

This Court has pointed out in *De Jonge* v. *Oregon* [86] that it is beyond the power of the state to make a crime of assisting another in the exercise of his constitutional rights. Thus the problem here posed resolves itself down to whether the indigent, Duncan, could have been constitutionally barred from California, *solely because of his indigency*, without being deprived of liberty without due process.

It is apparent not only from the statute's substance but also from its setting that California seeks to prevent non-resident indigent persons from achieving a "settlement" there. But California's mere legislative preference for handling a possible relief situation by seeking to exclude potential relief recipients is insufficient to justify a statute which "diminishes the exercise of rights so vital to the maintenance of democratic institutions." [87]

"The framers were not unaware that under the system which they created most governmental curtailments of personal liberty would have the support of a legislative judgment that the public interest would be better served by its curtailment than by its constitutional protection." [88] While "this court has never attempted to define with precision the words 'due process of law' * * * there are certain immutable principles of justice which inhere in the very idea of free government. * * *" [89] Whatever local interest, if any, there may be in the exclusion of poor persons, it is insufficient to justify a statute, the effect of which is to exclude or hamper the entrance of those who, because of the economic insecurity common to the great mass of the population, may conceivably require public assistance at some near or distant time. California may not invoke "the convenient apologetics of the police power" [90] to support a statute which goes beyond "the verge of the law".[91]

It is rooted deep in our concept of a democratic republic that "the ultimate foundation of a free society is the binding tie of cohesive sentiment." [92] In contrast to what can be observed in the nondemocratic states of the world where such ties are imposed by fiat from above, in the United States the development of such cohesive sentiment is a process which grows and spreads horizontally among our people.

The law involved here sets up a concrete barrier against the free movement of our peoples, one of the most important means "which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization." [93] It sets up that barrier upon a completely untenable and fictitious distinction based upon possession or lack of wealth. It denies to the poor man the protection of the laws which it grants to the rich man. It is, to be sure, not the function of the judiciary to usurp the legislative power, but it is equally true that the power of the legislature is not untrammelled when it cuts across basic rights. A state may not make individual economic security the touchstone of the right to individual liberty under our Constitution.

The right to free movement has "preserved for generation after generation, what Adams calls the American dream, 'the belief in the value of the common man, and the hope of opening every avenue of opportunity to him.' " [94] But California seeks to prevent the common man from exercising the rights which may be exercised by one whose sole distinction rests in the number of dollars he possesses. This is within neither the letter nor the spirit of our Constitution.[95]

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[86] 299 U. S. 353, 357. 362 *et seq.*

[87] *Schneider* v. *Irvington*, 308 U. S. 147, 161.

[88] Justice Stone, dissenting in *Minersville School District* v. *Gobitis*, 310 U. S. 586, 604-605.

[89] *Holden* v. *Hardy*, 169 U. S. 366, 389.

[90] *Kansas City Southern Ry. Co.* v. *Kaw Valley Drainage District*, 233 U. S. 75, 79.

[91] *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393. 416.

[92] *Minersville School District* v. *Gobitis*, 310 U. S. 586, 596.

[93] *Ibid.*, 596; cf. National Resources Committee, *Problems of a Changing Population*, *op. cit.*, 243.

[94] Ryan, *op. cit.*, 5.

[95] cf. Frankfurter, Felix, *Law and Politics*, 199.

In connection with the commerce clause we have heretofore discussed the nation's economic need for the free movement of population. The national need has its counterpart in the necessities of the individual. In the complex structure of our modern society it is indispensable to individual liberty that one have the right to seek economic opportunity wherever it may exist.

"The right to move unhindered from one place to another is as much an element of freedom as the right to stay where you are. If a man is to make the best use of his faculties, he must be free to take himself and his belongings from where he is to where he wants to be. Mobility is more and more essential to freedom in our modern industrial system, where local industrial conditions are continually changing, and where everyone must be able to follow his trade and open up new markets for his personal skill or his products." [96]

True as this was over thirty years ago, it is even more true today. Coextensive with the individual's right to free discussion "to shape the destiny of modern industrial society" [97] is his right to seek out the opportunity of fitting into a niche in that same society. His right to free expression by speech and press, free assembly and free worship are liable to become more academic than real without their implementation by the equally free economic opportunity which is possible within the framework of our system—when unimpeded by laws such as this. It is as necessary to the individual that he have the opportunity to seek freely for new employment as it is to the nation to have a supply of mobile, shifting labor to meet the complex demands of its economic make-up. In truth, the two are complementary to one another.

"Today with changing technology and local depletion of mine, forest, and soil, the people must constantly be moving from old jobs to new. It is the necessary price of progress." [98] That is not only the necessary price of progress but also the necessary prerequisite to progress.

This Court has pointed out that the admitted authority of the state's police power "does not go so far as to make it possible for the state to deny to lawful inhabitants, because of their race or nationality the ordinary means of earning a livelihood." [99] Can it then be said that it is possible for the state to deny to persons the ordinary means of earning a livelihood by the expedient of barring them from becoming lawful inhabitants of the state merely because of their economic status? Is it consistent with the cornerstone of our democracy to deny to economically underprivileged what the state grants to the economically privileged?

The Court has declared that "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the (14th) Amendment to secure." [100] Implicit in the right to work for a living in the common occupations of the community is the right to go any place where those occupations may require one to go to in order to exercise that right. The individual's right to work is any empty one when no work exists at the place where he is and he is barred by law from going to the place where he believes it to exist.

Freedom of movement and of residence must be a fundamental right in a democratic state. This Court has already said: "The liberty mentioned in that amendment (the fourteenth) means * * * the right of the citizen * * * to live and work where he will." [101] Subsequently it held the "right to establish a home" [102] to be "without doubt" [103] embraced within the term liberty. In *Williams* v. *Fears*, 179 U. S. 270, 274, Chief Justice Fuller stated: "undoubtedly * * * the right to remove from one place to another according to inclination is an attribute of personal liberty * * * and * * * is a right secured by the 14th Amendment." [104] Even an alien, once admitted to the United States, has the right of "entering and abiding in any state in the Union" [105] regardless of his personal financial condition or the state of the labor market.[106] Patently, a citizen of the United States can have no lesser right.[107]

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[96] Hobson, J. A., *The Crisis of Liberalism*, 99.

[97] *Thornhill* v. *Alabama*, 310 U. S. 88, 103.

[98] Coyle, *op. cit.*, 7.

[99] *Truax* v. *Raich*, 239 U. S. 33, 41.

[100] *Ibid.*, 41.

[101] *Algeyer* v. *Louisiana*, 165 U. S. 578, 589.

[102] *Meyer* v. *Nebraska*, 262 U. S. 390, 399.

[103] *Ibid.*

[104] See also: Stimson, F. J., *The American Constitution as it Protects Private Rights*, 99.

[105] *Truax* v. *Raich*, 239 U. S. 33, 39.

[106] *Gegiow* v. *Uhl, Commissioner*, 239 U. S. 3.

[107] *Joseph* v. *Randolph*, 71 Ala. 499, 504 *et seq.*

"For all the great purposes for which the Federal Government was formed we are one people, with one common country. We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own States." [108] It has been reiterated that the right to pass freely from one state to another is a privilege of federal citizenship protected by the Fourteenth Amendment.[109]

Whether freedom of movement and residence be within the aegis of the "privileges or immunities" clause of the Fourteenth Amendment or be embraced within the term liberty in the "due process clause" of that Amendment, it is a right essential to a united nation. The liberty of the individual to move and live within the geographic limits of his government which, in the truest sense, he constitutes is a basic constitutional right. The right is the more necessary and precious to those who must migrate because of economic compulsions. The dispossessed and economically disinherited must have the legally guaranteed minimal right of freedom of movement;—the same right to seek the improvement of their fortunes, to seek health, to change their social environment, as those more fortunately situated. The concept of liberty in any just, ordered democratic society must include those rights. No democracy can afford, without denying itself, to permit the legal status of the individual's "liberty" to fluctuate with his economic condition.

The artificial basis which California attempts to set up as the sole test of whether the appellant may assist another into the state—the latter's financial status—violates every concept of fundamental constitutional liberties. It serves to deprive appellant of his liberty without due process of law as well as to deny to him the equal protection of the laws.

The protection of this form of government may not be minified by reasons of temporary economic expediency. "Those who would enjoy the blessings of liberty must, like men, undergo the fatigues of supporting it." [110] The Fourteenth Amendment is no fair weather protection of the liberties of persons. Its operation is not limited to times of economic security when there is no pressure upon states to curtail liberty. It furnishes a "guaranty against any encroachment by the states upon the fundamental rights which belong to every citizen as a member of society.[111]

CONCLUSION

The judgment appealed from should be reversed and the complaint dismissed.

Respectfully submitted,

SAMUEL SLAFF,
Counsel for Appellant.

PHILIP ADAMS,
WAYNE M. COLLINS,
Of Counsel.

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[108] *Crandall* v. *Nevada*, 6 Wall. 35, 48-9.

[109] *Slaughter House Cases*, 16 Wall. 36, 80; *Twining* v. *New Jersey*, 211 U. S. 78, 97; *Hague* v. *C. I. O.*, 101 F. (2d) 774, 780.

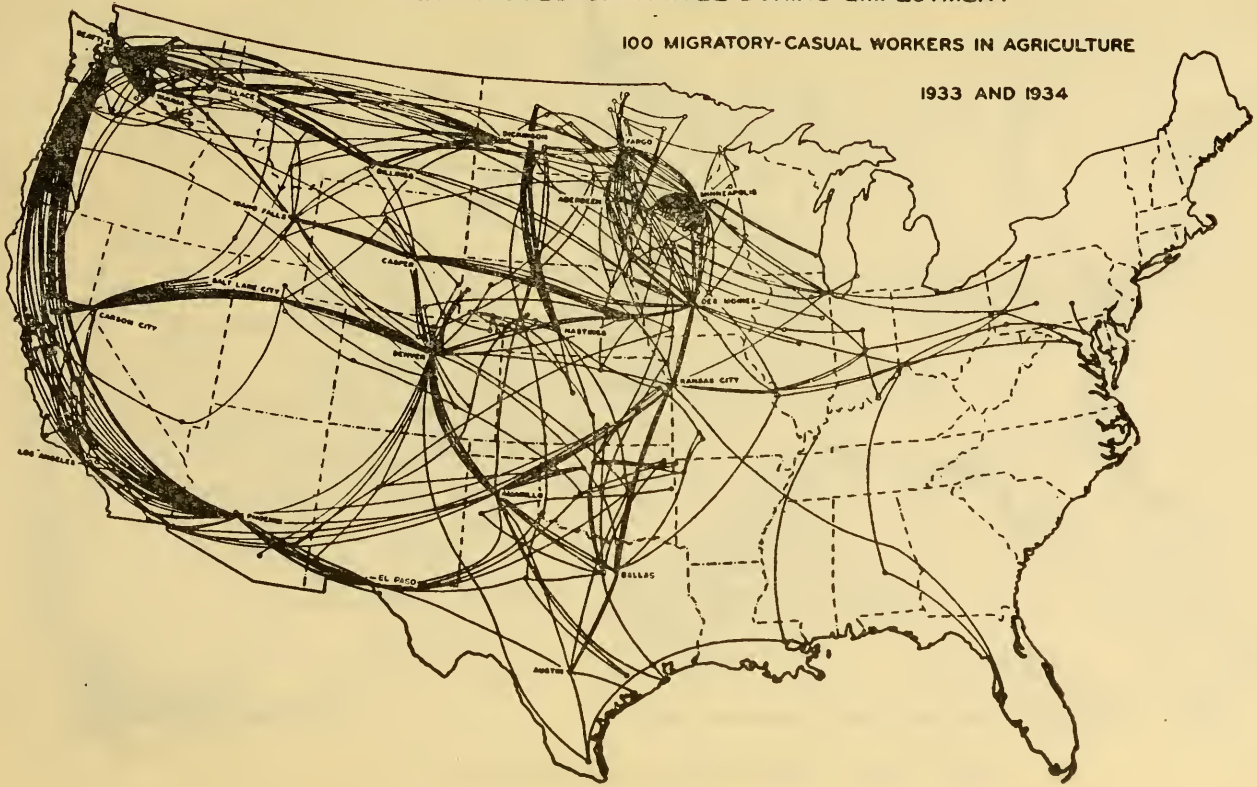
[110] Paine, Thomas, *Complete Works*, Vol. 2, 135.

[111] *U. S.* v. *Cruikshank*, 92 U. S. 542. 554.

APPENDIX

(See maps opposite)

FIG. 1—ROUTES OF TRAVEL DURING EMPLOYMENT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WALLACE
DICKINSON
FARGO
BILLINGS
ABERDEEN
MINNEAPOLIS
IDAHO FALLS
CASPER
SALT LAKE CITY
DES MOINES
CARSON CITY
HASTINGS
DENVER
KANSAS CITY
LOS ANGELES
PHOENIX
EL PASO
DALLAS
AUSTIN

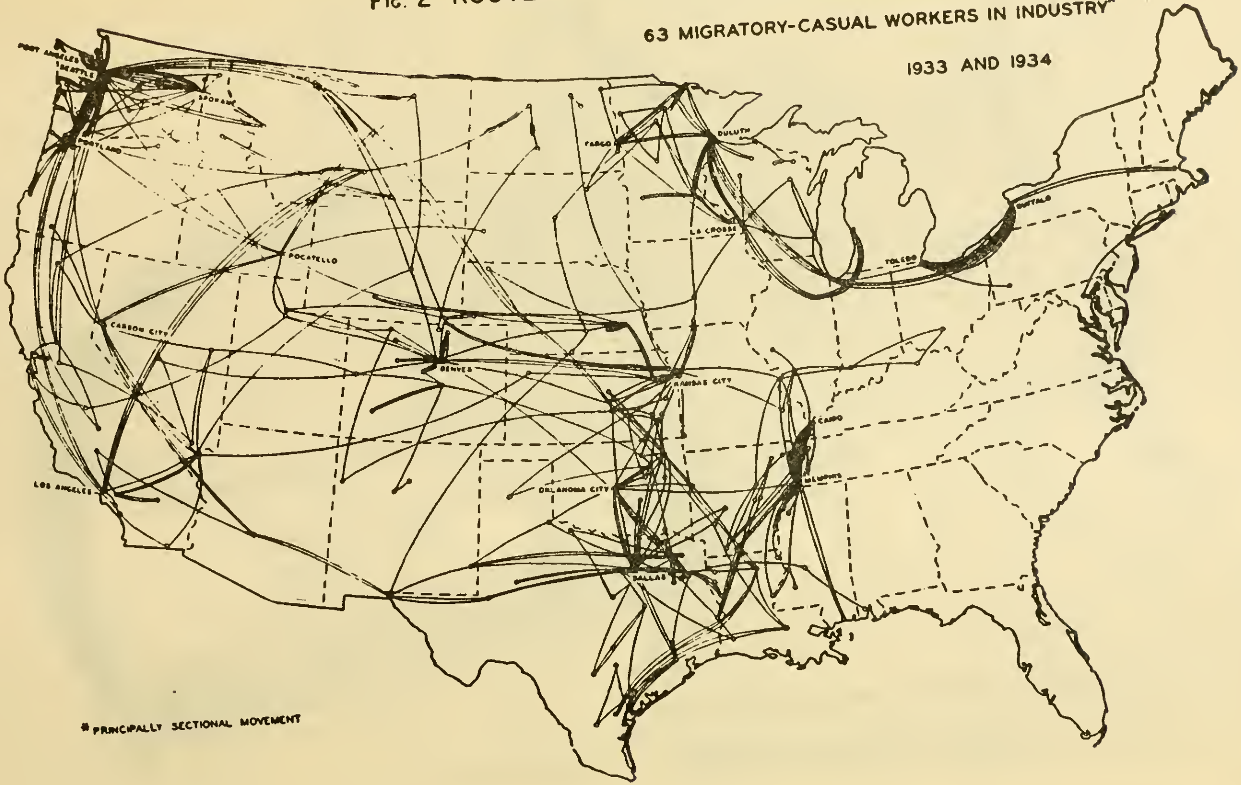
100 MIGRATORY-CASUAL WORKERS IN AGRICULTURE

1933 AND 1934

Fig. 2—ROUTES OF TRAVEL DURING EMPLOYMENT

63 MIGRATORY-CASUAL WORKERS IN INDUSTRY*

1933 AND 1934

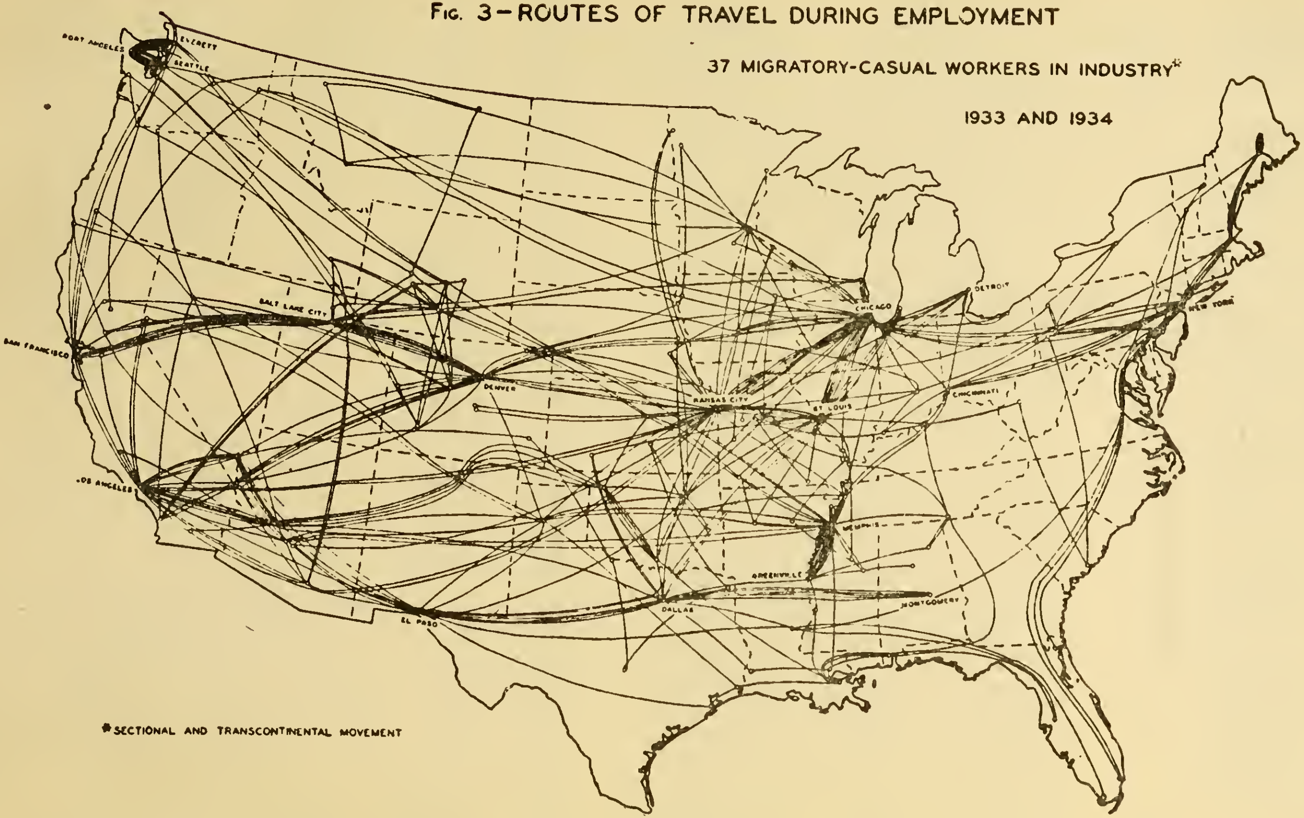

PORT ANGELES
SEATTLE
SPOKANE
PORTLAND
POCATELLO
CARSON CITY
LOS ANGELES
DENVER
FARGO
DULUTH
LA CROSSE
KANSAS CITY
OKLAHOMA CITY
DALLAS
CAIRO
MEMPHIS
TOLEDO
BUFFALO

* PRINCIPALLY SECTIONAL MOVEMENT

Fig. 3—ROUTES OF TRAVEL DURING EMPLOYMENT

37 MIGRATORY-CASUAL WORKERS IN INDUSTRY*

1933 AND 1934


PORT ANGELES
EVERETT
SEATTLE
SAN FRANCISCO
SALT LAKE CITY
DENVER
LOS ANGELES
EL PASO
DALLAS
KANSAS CITY
ST LOUIS
CHICAGO
DETROIT
CINCINNATI
MEMPHIS
GREENVILLE
MONTGOMERY
NEW YORK

*SECTIONAL AND TRANSCONTINENTAL MOVEMENT

Exhibit No. 5.

In the Supreme Court of the United States. October Term, 1940. No. 588. *Fred F. Edwards, Appellant,* vs. *The People of the State of California, Appellee and Respondent.* Appellee and Respondent's Brief. Charles A. Wetmore, Jr., Marysville, California, Counsel for Appellee and Respondent. Joseph L. Heenan, District Attorney of Yuba County, Arthur S. Powell, Deputy District Attorney of Yuba County, Marysville, California, Of Counsel.

APPELLEE AND RESPONDENT'S BRIEF

I

Preliminary Statement

Respondent accepts as correct the statement of the case made in appellant's brief.

The question presented is whether or not the California statute making it a misdemeanor for any person who brings or assists in bringing into this State any indigent person who is not a resident of the State, knowing him to be an indigent person, is valid. We also agree with appellant's re-statement of the question involved as practically amounting to whether or not a State can actually exclude paupers from coming into the State. It certainly must be admitted that if a State cannot constitutionally exclude paupers from its boundaries it cannot constitutionally prohibit persons from bringing paupers into the State, and, accordingly our argument will be directed largely to this question.

Appellant has cited no direct holding either by this Court or by any other federal court on the question involved, and we believe that none exists. However, we submit that this Court on numerous occasions has repeatedly and over a long period of years stated by way of strong dictum that a State may close its borders to the interstate movement of paupers. We submit that this right of States to protect themselves against the influx of paupers is one of the inherent rights of a State not delegated by the Constitution of the United States or any amendment thereof.[1]

II

Section 2615 of the Welfare and Institutions Code of California Is Constitutional Because It Constitutes a Valid Exercise of the Police Power of the State

We submit that Section 2615 of the Welfare and Institutions Code of California which makes it a misdemeanor for any person who brings or assists in bringing into the State an indigent person who is not a resident of the State, knowing him to be an indigent person, is a valid exercise of the police power of the State.

It would appear from its very nature the police power reserved to the States under the Constitution cannot be given any limited or specific definition but consists of the power to regulate the relative rights and duties of all within the State's jurisdiction so as to guard the public morals, the public safety, the public health, and the common good or what is more usually referred to as the general welfare of the people therein.

The Government of the United States being one of enumerated powers, those not granted by the Constitution to the Federal Government are necessarily reserved to the States.[2] The police power, an inherent attribute of State sovereignty,[3] was never surrendered to the Federal Government. The Supreme Court of the United States has always recognized this fundamental right as existing with the States.[4]

We submit that the Supreme Court early recognized in the case of *The Mayor etc. of New York v. Miln* (1837), 11 Pet. 102, 9 L. Ed. 648, the right of a State to exclude paupers from its boundaries under its police power. Section 1 of the State statute in the *Miln* case provided that the master of any ship arriving in the port of New York from any country out of the United States, *or from*

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[1] *Home Building & Loan Ass'n v. Blaisdell*, 54 S. Ct. 231, 290 U. S. 398.

[2] Supra, note 1.

[3] *State of Ohio v. Helvering, Ohio*, 292 U. S. 360, 78 L. Ed. 1307.

[4] *Jacobson v. Mass.*, 197 U. S. 11, 25 S. Ct. 358, 49 L. Ed. 643; *Slaughter House Cases* (1873), 16 Wall. 36, 21 L. Ed. 395; *House v. Mayes* (1910), 219 U. S. 270, 55 L. Ed. 213, 31 S. Ct. 234; *Pierce v. New Hampshire* (1847), 5 How. 554, 12 L. Ed. 279.

any other of the United States than the State of New York, should within twenty-four hours after the arrival of such ship, report in writing to the mayor of the city the name, place of birth, age and occupation of every person brought as a passenger on the ship with a penalty of $75.00 for each person not so reported. The defendant, a ship master who was sued under this statute, contended that the law was a regulation of commerce and therefore void. The Supreme Court sustained the constitutionality of the statute on the grounds that the object of the statute was to prevent the State of New York from being burdened with paupers, and that the purpose of the required report was to enable the city to take necessary steps preventing persons coming into the State from becoming chargeable as paupers. The Court held the statute valid as a proper exercise of the police power to control and exclude paupers. Justice Barbour in delivering the opinion of the Court stated:

> "Now, in relation to the section in the act before us, that is obviously passed with a view to prevent her citizens from being oppressed by the support of multitudes of poor persons, who come from foreign countries without possessing the means of supporting themselves. There can be no mode in which the power to regulate the internal police could be more appropriately exercised."

Justice Barbour further stated:

> "We think it as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possible convicts, as it is to guard against the physical pestilence which may arise from unsound and infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease."

It is unfortunate that Section 2 of the statute which provided that the master of the vessel should be bound in sureties in a sum not to exceed $300.00 for every passenger in order that the city be saved harmless from the possible maintenance of such persons was not actually passed upon. It was not counted upon in the original declaration which was demurred to and certified to the Circuit Court and finally before the Supreme Court.[5] Section 2 of the New York statute was clearly anti-pauper legislation, and although Justice Barbour's opinion seems to consider the fact as a whole, nevertheless, Section 1 which merely required the report of the master as to *all* his passengers was the only section actually before the Court, and the consideration of which was necessary to the decision. Hence, what, but for a limited certification, would have been a direct holding on the right of a State to exclude paupers[6] under its police power is relegated to the status of very strong dictum. We urge that in view of the unequivocal opinion of the Court in the *Miln* case there can be little doubt that had the last mentioned issue been squarely before the Court its validity would likewise have been favorably passed upon. Due to the confusion over the actual issue involved in the *Miln* case, it was cited by Justice Grier in his opinion in the *Passenger Cases*, 7 How. 283, 12 L. Ed. 775, as being an express holding upon the question.

Following the *Miln* case the Supreme Court on numerous occasions reiterated the right of a State in the exercise of its police power to exclude paupers from its limits.[7]

In conformity with earlier dicta to the effect that the exclusion of paupers from a State was a valid exercise of State police power, this Court finally had occasion to make a direct holding that the exclusion of immigrant paupers from the United States was a valid exercise of the federal police power. In the case of *Kaoru Yamataya v. Fisher* (better known as the "Japanese Immigrant Case"), 189 U. S. 86, the United States immigration officers refused to allow plaintiff, a Japanese citizen, to enter the United States on the ground that she was a pauper and therefore came within the provisions of the Immigration Act of 1901 which provided for the exclusion of, among others, paupers or persons likely to become a public charge. Plaintiff contended that this statute was invalid as it conflicted with a treaty with Japan which treaty provided that all Japanese citizens had full liberty to enter, travel or reside within the United States. However, the treaty expressly excepted from its operation any regulations relating to "police and public security". Consequently, the issue squarely before the Court was whether or not the statute was a valid police regulation. The Supreme Court held that the statute was a valid exercise of the police power, and Mr. Justice Harlan, in delivering the opinion of the Court, stated:

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[5] See concurring opinion of Justice Thompson in the *Miln* case.

[6] It is to be noted that the opinion in the *Miln* case purports to uphold the exclusion of: (a) Paupers from without the U. S. (b) Paupers from other states of the U. S. Various Acts of Congress subsequently prohibited the immigration of *alien* paupers.

[7] *Hannibal & St. Joseph R. R. Co. v. Husen* (1878), 95 U. S. 465, 24 L. Ed. 527; *In re Ah Fong* (1874), 3 Saw. 144, 1 Fed. Cases 213; *Henderson v. Wickham* (1875), 92 U. S. 259, 23 L. Ed. 543; *Chy Lung v. Freeman* (1876), 92 U. S. 275, 23 L. Ed. 550; *Passenger Cases*, supra; *Plumly v. Mass.* (1894), 155 U. S. 461; *Missouri K. and T. Ry. v. Haber* (1898), 169 U. S. 613.

> "A statute excluding paupers or persons likely to become a public charge is manifestly one of police and public security."

In the "Japanese Immigrant Case" the Supreme Court necessarily held that the exclusion of paupers was a police measure properly to be exercised by the Federal Government. Surely, if such exclusion of paupers in immigration is a valid federal police measure, it would also follow that the same exclusion by the States would be but the States' exercise of the same kind of power and valid under the reservation of such power by the several States under the Constitution.

Section 2615 of the California Welfare and Institutions Code is a reenactment of the identical statute which was originally passed by the California legislature in 1901 (Cal. Stats. 1901, p. 636, Sec. 3) reenacted in 1933 (Cal. Stats. 1933, p. 2010, Sec. 13) and finally placed in the Welfare and Institutions Code by the legislature in 1937 where it has since remained. Thus, California has for forty years realized the need for police legislation against the immigration of paupers, although events of the last ten years have made this problem increasingly acute because of the attraction to California of paupers from other States because of higher relief benefits, old age pensions, etc. However, the Supreme Court of California never had an opportunity to pass upon this statute, although it was indicated at an earlier date that such a statute would be a valid exercise of the State's police power.[8]

Many other States have statutes similar to the California statute [9] but their validity has never been passed upon by the Supreme Court.

Inasmuch as the police power of a State consists in its power to regulate the health, safety, morals and general welfare of all within its jurisdiction, we submit that the California statute comes within all of these general classifications.[10]

Although in 1901 when the statute under consideration was originally enacted there was no acute pauper emigration to California, the last decade has developed a problem from this source staggering in its proportions.

A social problem in the south and southwest for over half a century, the "poor white" tenants and share croppers, following reduction of cotton planting, droughts and adverse conditions for small scale farming, swarmed into California. These unfortunate people were usually destitute when they arrived. Their ordinary routine has been, upon coming to California, first to go on Federal Relief for one year and then on to State and County Relief rolls indefinitely. After they earn a little money in the harvests they send back home transportation for their relatives, generally the aged and infirm, and these immediately become and continue public charges. They avoid our cities and even our towns by crowding together in the open country and in camps under living conditions shocking both as to sanitation and social environment. Underfed for many generations they bring with them the various nutritional diseases of the South. Their presence here upon public relief, with their habitual unbalanced diet and consequently lowered body resistance, means a constant threat of epidemics. Venereal diseases and tuberculosis are common with them and on the increase. The increase of rape and incest are readily traceable to the crowded conditions in which these people are forced to live. Petty crime among them has featured the criminal calendars of every community into which they have moved. As proven by experience in agriculture strikes, they are readily led into riots by agitators although it must be said they stubbornly resist all subservient influences, being loyal Americans whose only wish is for a better chance in life. Their coming here has alarmingly increased our taxes and the cost of welfare outlays, old age pensions, and the care of the criminal, the indigent sick, the blind and the insane. Therefore, how can it be said that California should not have the power in the protection of the safety, health, morals and welfare of its people, to bar proven paupers among these indigents from our State? Should the States that have so long tolerated and even fostered the social conditions that have reduced these people to their state of poverty and wretchedness, be able to get rid of them by low relief and insignificant welfare allowances and drive them into

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[8] *State* v. *S. S. Constitution* (1872), 42. Cal. 578.

[9] *State* v. *Cornish* (1890), 66 N. H. 329, 21 A. 179; *Pitkin County* (1893), 3 Colo. App. 328, 33 Pac. 143; *Super. of Poor of Newaygo* v. *Nelson* (1899), 42 N. W. 797; *Coe* v. *Smith* (1841), 24 Wend. 341.

[10] *St. Louis & S. F. R. R. Co.* v. *Matthews*, 165 U. S. 1, 41 L. Ed. 611, 17 S. Ct. 243; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 61 L. Ed. 685, 37 S. Ct. 260; *Home Bldg. & Loan Ass'n* v. *Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, 78 L. Ed. 413.

California to become our public charges upon our immeasurably higher standard of social services? Naturally, when these people can live on relief in California better than they can by working in Mississippi, Arkansas, Texas or Oklahoma, they will continue to come to this State.

III

Reply to Appellant's Brief

Appellant first contends that the California statute violates the Commerce clause of the Constitution of the United States [11] on the ground that the passage of persons from State to State is interstate commerce and consequently a State statute designed to obstruct the free passage of persons into a State is an attempted regulation of commerce and as such is null and void. We agree with appellant's declaration that the movement of persons from one State to another constitutes interstate commerce under the early definition laid down by Mr. Chief Justice Marshall in the famous case of *Gibbons* v. *Ogden*, 9 Wheaton 1, wherein it was stated that commerce is "intercourse."

However, we heartily disagree with appellant's further contention that because a State statute happens to affect interstate commerce that it is necessarily void. We submit that the commerce clause is subject to a valid exercise of a State's police power and if a statute is a proper police measure it is valid even though interstate commerce may be incidentally affected.[12] This right was early recognized by the Court in *Hannibal and St. Joseph R. R. Co.* v. *Husen*, 95 U. S. 465, wherein the Court stated:

> "We admit that the deposit in Congress of the power to regulate foreign commerce and commerce among the States was not a surrender of that which may properly be denominated police power."

The Court then went on to add:

> "It may also be admitted that the police powers of a State justify the adoption of precautionary measures against social evils. Under it, a State may legislate to prevent the spread of crime or pauperism or disturbances of the peace. It may exclude from its limits convicts, paupers, idiots and lunatics, and persons likely to become a public charge, as well as persons afflicted by contagious or infectious diseases."

This Court has also taken the position that such State regulation of paupers is not violative of the commerce clause by simply declaring that paupers, indigents, and vagabonds are not legitimate subjects of interstate commerce. In the *License Cases*, 5 How. 504, 12 L. Ed. 256, the Court stated:

> "It is to be remembered that disease, pestilence and pauperism are not subjects of commerce.
> * * * They are not things to be regulated and trafficked in, but to be prevented as far as human foresight or human means can guard against them."

Again in the *Passenger Cases*, 7 How. 283, 12 L. Ed. 702, the Court said:

> "But I have said the States have a right to turn off paupers, vagabonds and fugitives from Justice, and * * * When Congress shall legislate—if it be not disrespectful for one who is a member of the judiciary to suppose so absurd a thing of another department of the government—to make paupers, vagabonds, suspected persons and fugitives from justice subjects of admission into the United States, I do not doubt it will be found and declared should it ever become a matter for judicial decision, that such persons are not within the regulating power which the United States has over commerce. Paupers, vagabonds, and fugitives never have been subjects of rightful national intercourse, or of commercial regulation, except in the transportation of them to distant colonies to get rid of them, or for punishment as convicts."

Thus, the Supreme Court has consistently declared that the exclusion of paupers by a State is not violative of the commerce clause.

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[11] *U. S. Const.* Article I, Sec. 8, Cl. 3.

[12] *Bayside Fish Flour Co.* v. *Gentry*, 297 U. S. 422, 59 S. Ct. 513; *Great Northern R. Co.* v. *Washington*, 300 U. S. 154, 81 L. Ed. 573, 57 S. Ct. 397; *Denver & R. G. R. Co.* v. *Denver*, 250 U. S. 241, 63 L. Ed. 958, 39 S. Ct. 450.

Appellant also contends that the California statute violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States. Our answer to this contention is that the 14th Amendment is subject to a valid exercise of the police power of the States, as the passage of this amendment did not effect a surrender of this power to the Federal Government. Justice Field in his opinion in the case of *Barbier v. Connolly*, 113 U. S. 27, 5 S. Ct. 357, very clearly brought out this proposition when he stated:

> "But neither the Amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its 'police power', to prescribe regulations to promote the health, peace, morals, education and good order of the State, develop its resources and add to its wealth and prosperity."

And in *Louisville & N. R. Co. v. Melton*, 218 U. S. 36, 30 Sup. Ct. 676, the Court said:

> "That the 14th Amendment was not intended to and does not strip the states of the power to exert their lawful police authority is settled, and requires no reference to authorities."

It is true that the 14th Amendment protects the life, liberty and property of persons within the boundaries of the United States, but as the Supreme Court has explicitly and repeatedly reiterated this protection is subject to reasonable police regulation by the States.[13] It may be said that the great majority of our laws, whether State or national, in some way restrict our liberty, but as they are necessary limitations and are for the common good, it cannot be contended that they are invalid.

IV

CONCLUSION

The State of California does not wish to shirk or evade the responsibilities of taking care of its own indigents, but does not desire and is not in a position to shoulder the burden of caring for the indigents from a great many of her sister States, expecially from the regions of the Great Plains and the South.

California has already been doing far more than her share of providing for her own indigents as well as for the general influx of indigents from other States. The amount of aid extended through State and county public assistance agencies in California has risen from $82,820,943.46 for the period of June, 1936, to July, 1937, to $138,160,668.26 for the period of January, 1940, to February, 1941.[14]

During the period from July 1, 1935, through 1939 inclusive, more than 350,000 migrants whose breadwinners were in need of manual employment entered the State of California by automobiles at border checking stations maintained by the Department of Agriculture.[15] That the total number of migrants who have entered California during this period was far in excess of this figure is evident when it is realized that no count has been made of persons in need of manual employment entering the State by bus, as coach passengers on railroad trains, or as riders on freight trains.[16]

In the decade 1930-1940 the net migration into this State, that is, arrivals less departures, has been more than 1,200,000 persons, according to the best available estimates.

However, there is no evidence of any commensurate increase in the available gainful occupations or employment in California during the past decade. In agriculture, there has been no substantial increase in the number of persons gainfully occupied as farmers or laborers, in 1940 as compared to 1930.

The 25 percent increase in California's population over the decade has not been compensated by a relatively greater increase in employment, and every factory employment showed less than a 15 percent increase in employment, over 1929 during the peak year of 1937.[17] Any near future increase in employment due to defense industries in this State will necessarily be temporary.

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[13] *Nebbia v. New York*, 291 U. S. 502, 78 L. Ed. 940, 54 S. Ct. 505; *Lacoste v. Department of Conservation*, 263 U. S. 545, 68 L. Ed. 437, 44 S. Ct. 186; *Keller v. United States*, 213 U. S. 138, 29 S. Ct. 470, 53 L. Ed. 737.

[14] Summary of Public Assistance, February, 1941, State of California Department of Public Welfare.

[15] Migrants—A National Problem—and Its Impact on California, California State Chamber of Commerce, May, 1940.

[16] Ibid

[17] Ibid, 10.

In such areas as the Sacramento and San Joaquin Valleys, where the resident population of entire counties has been increased by 40 or 50 percent within a five-year period, with more than half of this increase concentrated within a two-year period, there have developed some acute problems of housing, health and sanitation, education of children, hospitalization, and relief.[18]

The outlays of many counties for education, sanitation, and hospitalization increased during this five-year period from 100 per cent to 300 per cent.[19]

One of the consequences of the large influx of indigents into California from the other States has been to increase the combined county and local district tax levies approximately 100 per cent in the five southern San Joaquin Valley counties, 50 per cent in the six adjacent valley agricultural counties to the north, 55 per cent in Los Angeles County, and 38 per cent over the remainder of the State.[20]

Further evidence of the dependency of the recent indigents upon relief in the various counties in the State is furnished by an analysis of the heads of families on the State unemployment relief rolls, as of February, 1939.[21]

In Madera County, for example, 55 per cent of the heads of families on the State relief rolls during February, 1939, had been in the State less than five years. In Tulare County the comparative percentage was 52 per cent. In Merced and Kern counties it was approximately 46 per cent. In Stanislaus County it was 45 per cent, and in Yuba County 38 per cent.[22]

Although adequate data are not available on the average earnings of unskilled workers either prior or following the influx, it would seem obvious that the impact of the migration has been to reduce average earning per worker.

The State of California has higher relief benefits and old age pensions than any other State in the union,[23] and consequently, indigents are encouraged to depart from the State of their origin and trek to this State in the hope of bettering themselves. On the other hand, many of the sister States keep their relief and old age benefits extremely low in order to encourage their indigents to leave the State and go elsewhere, usually to California.

For example, payments to general relief cases during the month of January, 1940, amounted to $31.35 per case in California, as compared to $4.86 in Arkansas, $4.96 in Oklahoma, and $7.08 in Texas.[24]

Average monthly payments to recipients of old-age aid in California were $38.00 per case, compared to $6.00 in Arkansas, $8.91 in Texas, and $17.58 in Oklahoma.[25]

Aid to dependent children averaged $43.94 per family in California, compared to $8.12 in Arkansas and $12.24 in Oklahoma. Texas has no such program.[26]

It should also be noted that the California figures included only cash payments provided to the various groups mentioned and do not include any estimate of the value of surplus commodities provided in addition to cash.

Thus, it appears that California by her humanitarian policy of better providing for indigents than have the other States has in turn been made to suffer by such course through the less generous policies of many of her sister States.

In the event the California statute is not upheld, persons, agents, corporations, etc., will be allowed to continue bringing in and assisting in bringing into this State more indigents from the other States, with the result that the relief burden will become prohibitive, wages for unskilled labor will continue downward due to the oversupply of such labor, and the State itself will eventually become bankrupt.

Finally, we submit that the Supreme Court has repeatedly laid down the fundamental rule that there exists a presumption in favor of the constitutionality of a legislative enactment,[27] and has laid down the additional principle that the presumption of constitutionality of a statute dealing with a subject clearly within the scope of the police power prevails in the absence of some factual foundation of record for declaring it to be unreasonable.[28]

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[18] Special Tabulation by California Taxpayers' Asociation.

[19] Ibid.

[20] Ibid.

[21] Data Furnished by the Division of Planning and Research of the California State Relief Administration.

[22] Ibid.

[23] See Table 1, Appendix.

[24] Ibid.

[25] Ibid.

[26] Ibid.

[27] *Butterfield* v. *Stranahan*, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349; *Powell* v. *Pennsylvania*, 127 U. S. 678 32 L. Ed. 253, 8 S. Ct. 992; *Fletcher* v. *Peck*, 6 Cranch 87, 3 L. Ed. 162.

[28] *O'Gorman & Young* v. *Hartford F. Ins. Co.*, 282 U. S. 251, 75 L. Ed. 324, 51 S. Ct. 130.

We further submit that appellant has failed to meet the burden of showing that the California statute is invalid.

The judgment appealed from should be affirmed.

Dated, Marysville, California.

April 21, 1941.

Respectfully submitted,

Charles A. Wetmore, Jr.,
Counsel for Appellee and Respondent.

Joseph L. Heenan,
District Attorney of Yuba County.

Arthur S. Powell,
Deputy District Attorney of Yuba County,
Of Counsel.

(Appendix follows.)

APPENDIX

Comparative public assistance data—January 1940

State	General relief[1]			W. P. A.[2]		
	Number of cases	Obligations incurred	Average amount per case	Persons employed	Earnings	Average per person
California	160, 534	$5, 033, 304	$31. 35	86, 096	$5, 379, 000	$62. 48
Oregon	12, 039	193, 569	16. 08	14, 498	872, 000	60. 15
Washington	24, 349	349, 936	14. 37	25, 608	1, 501, 000	58. 61
Arizona	2, 886	41, 258	14. 30	5, 821	337, 000	57. 89
Arkansas	3, 768	18, 328	4. 86	42, 132	1, 789, 000	42. 46
Kansas	29, 112	424, 001	14. 56	25, 325	1, 259, 000	49. 71
Missouri	35, 955	461, 076	12. 82	76, 757	4, 061, 000	52. 91
Oklahoma[3]	13, 100	65, 000	4. 96	45, 906	1, 878, 000	40. 91
Texas[3]	15, 400	109, 000	7. 08	88, 680	3, 638, 000	41. 02

State	Old-age assistance			Aid to dependent children		
	Number of recipients	Obligations incurred	Average per person	Number of families	Obligations incurred	Average per family
California	134, 740	$5, 120, 596	$38. 00	14, 513	$637, 644	$43. 94
Oregon	20, 521	437, 740	21. 33	1, 918	76, 560	39. 92
Washington	39, 098	861, 880	22. 04	4, 811	143, 654	29. 86
Arizona	7, 848	211, 677	26. 97	2, 482	79, 912	32. 20
Arkansas	18, 464	110, 806	6. 00	4, 051	32, 904	8. 12
Kansas	26, 236	505, 407	19. 26	6, 139	175, 212	28. 55
Missouri	79, 280	1, 307, 863	16. 50	9, 902	231, 635	23. 39
Oklahoma	70, 546	1, 240, 373	17. 58	17, 482	213, 896	12. 24
Texas	119, 900	1, 068, 107	8. 91	0	0	0

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[1] Includes cases receiving hospitalization and for burial only, not previously reported.
[2] W. P. A. and other federal agencies, December, 1939.
[3] Estimated.

Source: January issue of Public Assistance—Social Security Board.

Exhibit No. 6.

ORDER OF SUPREME COURT DIRECTING REARGUMENT

Order of the Supreme Court directing reargument and requesting the appearance of the attorney general of the State of California. *Fred F. Edwards, Appellant,* vs. *The People of the State of California.* Monday, May 5, 1941. · No. 588

REARGUMENT ORDERED

The case is set for oral argument on Monday, October 13, next, and the Attorney General of the State of California is requested to appear either in person or by his representative to present the views of the State with particular reference to the judicial or administrative interpretation by State authorities of the statute involved.

Exhibit No. 7.

In the Supreme Court of the United States. October Term, 1941. No. 17. Fred F. Edwards, Appellant, vs. The People of the State of California, Appellee and Respondent. Earl Warren, Attorney General of the State of California, W. T. Sweigert, Assistant Attorney General of the State of California, Hiram W. Johnson, 3rd, Deputy Attorney General of the State of California, 600 State Building, San Francisco, California, Attorneys for Appellee

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA ON BEHALF OF APPELLEE

The Response of the Attorney General to the Request of the Court

The Attorney General of California responds to the request of this Honorable Court made under date of May 5, 1940 that he appear either in person or by his representative to present the views of the State with particular reference to the judicial or administrative interpretation by State authorities of the statute involved, to wit, section 2615 of the Welfare and Institutions Code of California, making it a misdemeanor for any person, firm or corporation to bring or assist in bringing into the State any indigent person, not a resident of the State, knowing such person to be indigent.

In connection with our response to the Court's request, we present this brief, together with a separate reference Supplement containing such particular information as might assist the Court in the determination of the case.

This brief presents a summary of the administrative and judicial interpretation of the statute by State courts and authorities, as far as the statute can be said to have been interpreted by them, also a summary of the history of the statute and its relation to other statutes and administrative rules pertaining to relief of both resident and non-resident persons, and also an expression of the views of the Attorney General respecting the interpretation and validity of the section.

References are made to the separate Supplement for such detail as the Court may wish to pursue. In the separate Supplement particular information is collected under the headings set forth in the Index to Supplement.

We have set forth as Exhibit No. 1, pp. 1–24 of the Supplement, the full text of the Rubinow statement, prepared by the Bureau of Statistics of the State Relief Administration, on The Problem of Interstate Migration As It Affects the California State Relief Administration, because this statement gives the best factual summary of the problem which we have found, and we believe it will interest and assist the court.

The Issue Presented in the Case

We agree with the view of counsel for appellant and the statement of the District Attorney of Yuba County in his brief for appellee (Appellee's Brief, page 1) that this case presents the issue of the constitutionality of section 2615 of the Welfare and Institutions Code of the State of California under the Constitution of the United States.

However, for reasons hereinafter set forth, we are of the opinion that the issue cannot be stated as broadly as counsel for appellant and the District Attorney have agreed.

In Appellant's Brief (page 20) it is stated that "* * * the problem here posed resolves itself down to whether the indigent, Duncan, could have been constitutionally barred from California, solely because of his indigency, without being deprived of liberty without due process". In the District Attorney's brief (page 2) he states "we also agree with appellant's restatement of the question as practically amounting to whether or not a State can actually exclude paupers from coming into the State".

We are of the opinion that there is a material distinction between absolute exclusion of indigents from the State and a limited provision designed to prohibit other persons from bringing, or assisting in bringing, indigents into the State, and we will shortly explain our reasons for making this distinction.

THE STATUTE DOES NOT REFLECT THE ACTUAL POLICY OF THE STATE OF CALIFORNIA WITH RESPECT TO INDIGENTS FROM OTHER STATES—CALIFORNIA'S ACTUAL POLICY AND PROBLEM

Truly, California has been developed as a result of the westward movement of population through the years; it has been the beneficiary of an influx from other parts of the nation of brain, of brawn, of heart, of initiative, of ambition. California is not unmindful of its history, its heritage in this respect, nor is California unaware of the possibilities that still may be realized in the State from this source.

California has never practiced a policy inconsistent with this acknowledgment or based upon any attitude toward citizens of sister states, other than an attitude of warm friendship, especially for those who have little to bring to California except their health, and the character and hope that build cities and states and nations.

No greater proof of this truth could be found than the fact that, although this particular law has been on the statute books of the State in one form or another for more than three quarters of a century (Supp., Ex. 4, pp. 43–47), and although it is patterned on similar laws long in force in twenty-seven other states of the Union (53 Harv. L. Rev., p. 1033, n. 15), California has resorted to its provisions, so far as our research has disclosed, only thirteen times in all those years. (Supp., Ex. 6, pp. 58–86.)

We believe that the Court will indulge this diversion from purely legal considerations because a certain just pride may be taken in the fact that, notwithstanding California has borne a heavier share of the abnormal migration of recent years than any other State (Supp., Ex. 1, pp. 11–16), the problem at times reaching points of grave crisis, and notwithstanding this particular law has been available at all times, California authorities have resorted to it but rarely, and even then only in two counties of the State, besides the county involved in the pending case, counties that were being pressed at the time almost beyond endurance by the exigencies of the problem. (Supp., Ex. 1, pp. 13–14.) (See also District Attorney's Brief for Appellee, p. 16.)

This quite clearly indicates that, prescinding entirely from the availability and validity of a penal statute like section 2615 of the Welfare and Institutions Code, California has in practice preferred to deal with the problem as far as humanly possible by other means more adaptable to the circumstances of individual cases of migratory indigency. (Supp., Ex. 1, pp. 6–8.)

These policies and practices have been based upon the principle that indigence in migration has become a condition, not a theory, and that, however overwhelmed the State or the counties might be, such persons, particularly families, must be accepted and cared for to such extent as might be at all consistent with the welfare of the states and counties and the welfare of the persons involved. (Supp., Ex. 1, pp. 6–8.)

For example, the various counties of the State, administering aid to indigent persons, have always had the power to extend such emergency relief to dependent nonresidents as the respective boards of supervisors deem necessary (Wel. & Inst. Code, sec. 2501; Supp., Ex. 3, p. 38), notwithstanding the residence restrictions otherwise applicable (Wel. & Inst. Code secs. 2555, 2556; Supp., Ex. 3, pp. 39–40), and the power to provide transportation for indigents to other counties or states when such indigents will thereby cease to become public charges, or when friends or relatives of such indigents agree to assume the cost and expense of the care and maintenance of such indigents, or when the indigents are legally public charges in the places to which they are so transported. (Wel. & Inst. Code, secs. 206, 2502; Supp., Ex. 3, pp. 37, 38.)

Likewise, the State Relief Administration, which has since 1933 administered relief of hardship and destitution due to unemployment, has modified its rules realistically to extend aid to non-residents when necessary by reason of the unavailability of federal funds for transient migrants. (Supp., Ex 8, pp. 100, 102.)

It is estimated that between July, 1933 and June, 1940 more than 300,000 persons received aid within one year after they had come to California, i. e., more than 32% of an estimated total migration of 957,000 persons to California during the period, and it is further estimated that the State Relief Administration, operating under the various State Relief Administration statutes, expended for these 300,000 non-residents a total of approximately $13,000,000 during the period, consisting of State Relief Administration funds and funds granted to the State Relief Administration by the Federal Emergency Relief Administration. (Supp., Ex. 1, pp. 12–13.)

These grants from the Federal Emergency Relief Administration, between 1933 and 1936, amounted to $8,978,713.18. (Supp., Ex 8, p. 101.) The balance of $4,021,286.82 represented actual State funds.

The above figures do not include whatever portion of the more than quarter billion dollars (Supp. Ex. 7, pp. 87-93), expended by the counties of the State for indigent aid, general relief, needy aged, needy blind, needy children, under the Welfare and Institutions Code, may have been expended for emergency relief to non-residents, no segregated report for such aid to non-residents being available. Nor do the above figures include a total of $12,418,617 expended directly by the Federal Farm Security in California for aid to needy agricultural migrants during the period 1938 to date. (Supp., Ex. 8, p. 105.)

The total of actual State funds expended by the State Relief Administration during the period 1933 to June, 1940, for the relief of hardship and destitution due to unemployment, was approximately $160,000,000, exclusive of administrative costs. (Supp., Ex. 7, pp. 92–93.) So, we may say that approximately 2½% of State funds expended for relief by the State Emergency Relief Administration during the period was for aid to non-resident transient indigents.

As the District Attorney of Yuba County has pointed out in his brief (District Attorney's Brief, pp. 16–18), California is second to no state in the Union when it comes to consideration, generosity even, for those persons who stand, unfortunately, in need of relief for any reason, whether unemployment, old age or child helplessness. (See also Supp., Ex. 7, p. 87.)

The rate of relief per case in California, as the District Attorney points out in a table set forth in the appendix to his brief, runs an average amount per case of $31.35 as compared with the next highest state, $16.08, and as compared with $7.08 in Texas, the state from which the alleged indigent, Duncan, was brought by Edwards, the defendant in the pending case.

Certainly, this does not indicate that California during this period was committed to any actual policy of exclusion from California of indigent persons from other states or that it has attempted to build a "Chinese wall" around the State or set up a "statutory border patrol" as suggested by counsel for appellant. (Appellant's Brief, pp. 14, 15.)

This situation does indicate, however, that California has been faced and is faced with a problem of great importance to its citizens, not only because of the expense involved, but because of those health, moral and crime problems inevitably attendant upon an abnormal influx of persons unable to maintain themselves (Supp., Ex. 1, pp. 4, 5, 20), problems rendered more complex because of the state and county residence requirements ordinarily applicable in the administration of relief. (Supp., Ex. 8, pp. 94–100.)

We have set forth in the Supplement to this brief (Ex. 2, pp. 25–35) a series of Resolutions adopted by the California legislature referring to the seriousness of the migrant problem in California and calling upon the Federal Government to recognize its existence by aid to the State and by means of federal legislation.

Welfare and Institutions Code Section 2615—History and Background

We have set forth in the Supplement to this brief the detail respecting the legislative history of section 2615. (Supp., Ex. 4, pp. 43–47.)

It has been in the Welfare and Institutions Code in its present form since 1937, the year of the adoption of the code. Prior to 1937 the section existed in substantially the same form from 1933, in an act to provide for the aid and relief of dindigents. Prior to 1933 the statute existed from 1901, in an earlier act to provide for the maintenance and support of indigents and other persons, in form similar to the present section, except that the misdemeanor was described as the "* * * bringing or leaving within, or aiding in the bringing into or the leaving within, of any pauper or poor or indigent or incapacitated or incompetent person, as heretofore mentioned, in any county or city and county in the State of California * * *". (Supp., Ex. 4, p. 45.) Prior to 1901, however, and from 1860, and up to 1937, without express repeal until that year, a section substantially similar to the present section existed as section 18 of an act pertaining to county infirmaries for the relief of the indigent, specifically referring to the bringing of poor or indigent persons into the State from any place without the State, and fixing a penalty in the form of a fine. (Supp., Ex. 4, p. 46.)

We have also set forth in the supplement to this brief the detail respecting the Welfare and Institutions Code of which section 2615 is a part. (Supp., Ex. 3, pp. 36–42.) The Welfare and Institutions Code brought together in 1937 a number of statutes dealing with State institutions and general welfare, and the Code, as set forth in the supplement, gives the plan and rules for institutional and relief work long existing in California, the scheme of which was county responsibility for the general relief of indigent persons, supplemented by State aid to counties for needy children, aged persons and needy blind, and further supplemented by State maintenance of various hospitals and institutions.

In 1933, however, as depression and unemployment persisted alarmingly, California sets up a further and separate system "for the relief of hardship and destitution due to and caused by unemployment" and this sytem, operating as the State Relief Administration, under statutes separate from the Welfare and Institutions Code, extended direct relief pursuant to these statutes and the rules established thereunder. This State system for the administration of relief, and its relationship to the county system of relief operating under the Welfare and Institutions Code, is described in the Supplement to this brief, Exhibit 8, pp. 97–106.

Administrative Interpretation of Welfare and Institutions Code Section 2615

No rule specifically interpreting section 2615 exists in any administrative agency of the State, in neither the Department of Social Welfare, which has supervisory powers over the administration of poor relief by public agencies under the Welfare and Institutions Code (Wel. & Inst. Code sec. 113), nor in any of the counties, administering aid to indigents under that Code (Wel. & Inst. Code sec. ?500, Supp., Ex. 3, p. 37) nor in the State Relief Administration, administering State relief under the various State Relief Administration statutes. (Supp., Ex. 8, p. 97.)

However, the various counties of the State have adopted certain rules of policy and practice pertinent to the interpretation of the term "indigent person" as used in the Welfare and Institutions Code of which section 2615 is a part.

Also, the State Relief Administration has adopted rules of policy and practice pertinent to the interpretation of the term "hardship and destitution due to and caused by unemployment" as used in the State Relief Administration statutes.

Before referring to these rules, we wish to point out certain statutory provisions pertinent to the interpretation of the term "indigent person" as used in the Welfare and Institutions Code.

Section 2615 is contained in Division IV of the Code entitled, "Indigent Persons". In the supplement to this brief, Ex. 3, pages 36–42, we have set forth the sections of that Division related in any way to section 2615.

Section 2500 provides that every county "shall relieve and support all incompetent, poor, indigent persons and those incapacitated by age, disease or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, or by their own means, or by State hospitals or private institutions".

As already mentioned, counties are given power to give emergency relief to dependent non-residents (Wel. & Inst. Code sec. 2501) and power to incur expense for transportation of indigents to other counties or states under certain conditions. (Wel. & Inst. Code secs. 206, 2502.)

Section 2505 of the Code provides that "work may be required of an indigent, who is not incapacitated by reason of age, disease or accident, as a condition of relief".

Sections 2550, 2555 and 2556 of the Code provide that in order to be entitled to aid a person must have resided in the State for three years and in the county for one year. Prior to 1931 this requirement was one year in the State and three months in the county. (See Supp., Ex. 8, pp. 94–95.)

Section 2576 of the Code provides that "if any indigent has living within this state a spouse, parent or adult child, and such kindred or any of them, or any group of them has sufficient financial ability to support the indigent, he shall not be entitled to aid under this chapter, except such emergency aid as may be extended hereunder pending a determination of responsibility for his support. * * *" (See Supp., Ex. 8, p. 96.)

Section 2600 of the Code provides that the board of supervisors of any county "may establish its own policies with reference to the amount of property, if any, a person shall be permitted to have while receiving public assistance, to the end that so far as it is possible an applicant for public relief shall be required to apply his own property to his support", and section 2601 provides that the board of supervisors may require transfer of the indigent's property as security.

Under the foregoing section 2600, the various counties of the State have set up ordinances or rules or policies respecting property and we have set these forth for each county of the State in the Supplement to this brief, Ex. 5, pages 48–57.

These policies vary in detail and in the amount of property permitted to a relief applicant but an examination of the ordinances and rules will show that they are all based upon the statutory direction that a relief applicant must apply so far as possible his own property to his support, i. e., the applicant must be destitute of means or property to provide for his support and those dependent on him.

The State Relief Administration, operating since 1933 independently of Welfare and Institutions Code provisions and appropriating since then a total of $223,884,767.35 (Supp., Ex. 8, p. 99) for relief of hardship and destitution due to unemployment, and the administration thereof, likewise has established certain rules pursuant to the various statutes. (Supp., Ex. 9, pp. 107–114.)

From the first it adopted a policy of limiting its direct relief to "employable" persons, leaving the unemployables to the counties, upon the theory that "hardship and destitution" was not "due to and caused by unemployment", if the applicant was unemployable, a policy supported by an opinion of the Attorney General in 1935. (See Supp., Ex. 8, p. 100.)

From the first the State Relief Administration also followed its own rule requiring one year residence in the State as a condition of State relief, but this rule was made in view of the fact that between 1933 and 1936 grants from the Federal Emergency Relief Administration made possible a Federal Transient Service in California to meet the needs of transients, i. e., those not having the one-year residence for State relief. (See Supp., Ex. 8, p. 100.)

On September 6, 1935, the so-called FERA ceased its policy of maintaining the Federal Transient Service and, faced with this emergency, the State Relief Administration adopted various rules to meet the needs of non-resident transients, generally providing for emergency relief from State funds pending verification of their legal residence, and for a short period requiring that recipients of such relief indicate in advance a willingness to return to place of residence when verified. (See Supp., Ex. 8, pp. 101–103.)

In 1940, however, the State legislature placed the first statutory restriction on use of State funds for relief by providing in substance that henceforth all applicants to the State Relief Administration must have resided in the State for three years, and later in 1940 increased this requirement to five years. (See Supp., Ex. 8, p. 103.)

Since 1938 some relief to transients has been available from the Federal Government through the Farm Security Administration, which has applied its funds directly to the relief of "employable persons of agricultural background lacking state residence", this federal agency having expended approximately $12,000,000 for this purpose from 1938 to date. (See Supp., Ex. 8, p. 104.)

We have set forth in the supplement to this brief a summary of the Rules of the State Relief Administration interpreting the term "hardship and destitution" due to and caused by unemployment as used in the State Relief Administration statutes. (Supp., Ex. 9, pp. 107–114.)

Briefly, the basic rule is "lack of resources for support of any member of the family group, including inability of responsible relatives to support". (Supp., Ex. 9, p. 108.) The applicant is expected "to use to its fullest extent any available financial resource of any member of the family for support prior to the receipt of relief from this agency". (Supp., Ex. 9, p. 108.) More particular rules are set forth in the supplement. (Ex. 9, pp. 107–114.)

Judicial Interpretation of Welfare and Institutions Code Section 2615

No court of the State of California has ever specifically interpreted section 2615 except the Superior Court of Yuba County, exercising appellate jurisdiction in the instant case over the inferior Justice's Court of that county, and except certain Justice's Courts in two other counties in the twelve other prosecutions under the section, those prosecutions being referred to hereinafter.

However, the courts of California have interpreted the term "indigent person".

In *Alexander* v. *Superior Court of Los Angeles County*, 29 Cal. App. (2nd) 538, 84 Pac. 1061 (1938), a mandate proceeding to compel permission for plaintiff to sue without prepayment of jury fees on the theory that he was a pauper, the Court posed the question as follows:

> "May the trial court make an order permitting a party who is not an indigent to prosecute an action before a jury without the prepayment of jury fees?"

The Court then said:

> "This question must be answered in the negative. The law is settled in California that only an indigent person has a right to prosecute a civil action *in forma pauperis.* (*Gomez* v. *Superior Court*, 134 Cal. App. 19, 20 (24 Pac.

> (2d) 859); *Jenkins* v. *Superior Court*, 98 Cal. App. 729, 730 (277 Pac. 757). Indigent means destitute of property (Funk & Wagnall's Practical Standard Dictionary (1938) 586); lacking in what is requisite (vol. V, The Oxford English Dictionary (1933) 213). In the present case from petitioner's own testimony it appears that he was not indigent, since he was at the time in receipt of an average monthly income of from $110 to $115 and therefore, applying the rule of law above stated, was not entitled to prosecute his action *in forma pauperis*."
>
> (Petition for hearing in the Supreme Court denied by the Supreme Court, January 30th, 1939.)

In *Goodall* v. *Brite*, 11 Cal. App. (2nd) 540, 549, 54 Pac. (2nd) 510, 515 (1936), discussing the class of persons that might be hospitalized in county maintenance hospitals, the Court said:

> "If it were necessary we could find another satisfactory reason for the admission of this class of patients to the county hospital. It is admitted that indigent persons are to be admitted when in need of hospitalization. As far as we know the term 'indigent' has not been defined in California in so far as its use in connection with admission to county hospitals is concerned. It has been defined in other states chiefly in connection with the admission of the indigent insane to hospitals. The term when thus used has been held to include persons with insufficient means to pay for hospitalization after providing for those who legally claim their support. (*Depue* v. *District Court of Columbia*, 45 App. D. C. 54 (Ann. Cas. 1917E, 414); *In re Hybart*, 119 N.C. 359 (25 S.E 963); *Massachusetts Gen. Hospital* v. *Inhabitants of Belmont*, 233 Mass. 190 (124 N.E. 21); *People* v. *Board of Supervisors*, 121 N.Y. 345 (24 N.E. 830).) Applying this definition to the instant case, we hold that the word 'indigent', when used in connection with admission to county hospitals, includes an inhabitant of a county who possesses the required qualifications of residence, and who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support."
>
> (Petition for hearing in the Supreme Court denied by the Supreme Court, March 30th, 1936.)

In *San Francisco* v. *Collins*, 216 Cal. 187, 190, 13 Pac. 2d 912 (1932), involving the validity of a proposed bond issue of the City of San Francisco to make provision for the "indigent sick and dependent poor", as permitted by section 4041.16 of the Political Code (now section 200, Welfare and Institutions Code; Supp., Ex. 3, p. 37) and for "all pauper, incompetent, poor, indigent persons and those incapacitated by age, disease or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives and friends, or by their own means, or by state hospitals or other state or private institutions", as required of counties and cities and counties by Stats. 1933, p. 2005 (now section 2500, Wel. & Inst. Code; Supp., Ex. 3, p. 37), the Supreme Court of the State said:

> "There can be no question as to the applicability of the first statute, giving power to a county, and the second statute, imposing a duty on the county or city and county, to the existing situation, where large numbers of persons have become indigent through unemployment. The statutes are neither in terms nor spirit limited to the relief of chronic or permanent paupers, or any other class of poor persons, but extend to every person coming within the terms of the statute dependent upon public assistance for the necessities of life."

Webster's New International Dictionary defines "indigent" as "destitute of property or means of comfortable subsistence; needy; poor; in want; necessitous"; and defines "destitute" as "not possessing the necessities of life; in a condition of extreme want; without possession of resources"; and defines "pauper" as "a person destitute of means except such as are derived from charity; specif. one who receives aid from public poor funds; a very poor person".

The terms being practically interchangeable, we refer to *People* v. *Selby*, 26 Cal. App. 796, 148 Pac. 807 (1915), a criminal prosecution under section 270 of the Penal Code of California making it a felony for a husband to wilfully abandon and leave his wife "in a destitute condition", in which the court defined the term as used in this criminal statute as follows: (p. 801)

> "The statute upon which the information is based was obviously intended to cover those cases where the husband, without just cause, has willfully

> abandoned his wife and left her without means or resources and in a condition of absolute want—a condition in which she is unable to procure for herself the ordinary or common necessaries essential to the sustenance of life. This is, indeed, the natural meaning of the word 'destitute' or 'destitution' and the sense in which it is undoubtedly used in the statute. The uncontradicted evidence clearly shows that the wife in this case was not left in a 'destitute condition' by the defendant. Immediately upon the separation between herself and husband taking place, she was received into the family of a relative and there taken care of. Moreover, she had credit at a general merchandising store, where, according to the owner of the store, she was privileged to obtain merchandise on her own credit.
>
> She did not, nor did any other witness, testify that, after the separation, she was at any time deprived of the necessaries of life. The only proof upon that matter was that the defendant did not provide those necessaries. While it was, of course, his duty to furnish her with such necessaries, it was no crime for him not to do so if she was actually in want of them even though he might have abandoned her within the meaning of the statute. (See State v. Thornton, 232 Mo. 298, (32 L. R. A. (N. S.) 841, 844, 134 S. W. 519).)"

In *People* v. *Yates*, 114 Cal. App. (Supp.) 782, 789, a prosecution under section 270 of the Penal Code of California of a father for having "wilfully omitted to furnish necessary food, clothing, shelter or medical attention or other remedial care for his child", the Court said: (p. 789)

> "Appellant attacks the constitutionality of this statute on the ground that it is uncertain and defines as a crime acts which can only rest upon conjecture and hypothesis. The same provision applies to all children, whether born or unborn. If it is uncertain as to one it must be as to the other. The language requiring the furnishing of 'necessary food, clothing, shelter or medical attendance' has been in this section since it was first enacted in 1872, and it seems never to have been attached for uncertainty, nor do we find any fatal uncertainty in it. In the nature of things no specific and precise rule can be made on the subject. The statute points out certain kinds of care and requires the father to furnish them as necessary. The necessity is capable of ascertainment by proof to be submitted to the jury. In Ex parte Daniels (1920), 183 Cal. 636, 646 (21 A. L. R. 1172, 192 Pac. 442), the Supreme Court held that a statute making it unlawful to drive a motor vehicle at an unreasonable or unsafe speed was not void for uncertainty. The provisions of section 270 are at least as certain as the statute there upheld."

In the Supplement to this brief, Ex. 13, pp. 151–6, we have collected authorities construing the term "indigent" and we are of the opinion that the term has a well known and accepted meaning as a person who is destitute of property or means of comfortable subsistence, for himself and those whom he is legally obligated to support, and that it would be impractical to further define the term in a statute designed to deal with such a condition.

Going a bit further under the head of judicial interpretation in California, we refer to *State* v. *S. S. Constitution*, 42 Cal. 578, 10 Am. Rep. 303 (1872).

This case involved a State statute requiring a report to the State Commissioner of Emigrants of every passenger arriving from foreign ports and requiring a bond to be given for every such passenger to secure the state and counties against expense for the relief of such person.

In this case the master of the vessel failed and refused to provide such a bond, claiming that the persons involved were persons in the prime of life, in the full possession of their faculties, perfectly sound in body and mind, neither paupers, vagabonds or criminals, and in all respects competent to earn a livelihood.

The Court held that the statute was not a proper exercise of any police power of the state because its requirements applied to all foreign passengers, without regard to whether they were such as could reasonably be expected to become paupers, vagabonds, criminals, sick or infirm, and that this was too broad and not in a proximate degree germane to the subject.

However, the Court conceded the power of the State to "provide police and sanitary regulations to prevent the people of this state from becoming chargeable with the support and maintenance of persons imported from foreign countries, who either then were, or were soon after, to become a public charge", and said: (page 584)

> "* * * If it were conceded that this was the real purpose of the statute and that its provisions are reasonably adapted, and were intended to secure

> this result, and this only, there would be an end to the argument; for in all the numerous adjudications which have been had in respect to the power of the several States to interfere with commerce under the clauses of the Constitution above referred to, it has never been doubted that a State has the power, by proper police and sanitary regulations, to exclude from its limits paupers, vagabonds, and criminals, or sick, diseased, infirm, and disabled persons, who were liable to become a public charge, or to admit them only on such terms as would prevent the State from being burdened with their support. To surrender this power would be to abandon one of the highest prerogatives of local self-government, one of the chief functions of which is to preserve the public health and repress crime. * * *"

The Court then considered the question, assuming the statute to be no police or sanitary regulation, whether it could be, nevertheless, considered a valid enactment under the rule that, in the absence of congressional action in the field of commerce, a state might adopt regulations of a local nature, but the Court held that the statute was not local in character and that, therefore, the statute was not sustainable upon that theory.

In *Ex parte Ah Fook*, 49 Cal. 402 (1874) the Court considered a statute authorizing the State Commissioner of Immigration to ascertain whether there were among the passengers of vessels arriving from a foreign port persons who were "lunatic, idiotic, deaf, dumb, crippled, infirm, or paupers likely to become a public charge, or convicted criminals, or lewd or debauched women" and authorizing the Commissioner to either exclude such persons or require a bond from the owner or agent of the vessel to secure the State and counties against an expense resulting from the infirmities or vices of such persons.

The case involved certain Chinese passengers excluded by the Commissioner upon finding them to be lewd and debauched women and the Court held that the statute was not in contravention of the United States-Chinese Treaty of 1868, containing a most favored nation clause covering visiting Chinese subjects, because as the Court pointed out: (page 405)

> "* * * Otherwise, we should be prohibited from excluding criminals or paupers—a power recognized by all the writers as existing in every independent State. We can but think, that to give to the general language of the treaty a construction which would deprive both the State and United States Government of this power of self-protection would be a departure from the evident meaning and purpose of the high contracting parties."

The Court further held that the power of the Commissioner to determine whether particular individuals come within the provisions of the statute was not a denial of due process under the Fourteenth Amendment because the operation of health or quarantine laws must necessarily be prompt and summary and statutes clothing officers with such powers have never been held to be unconstitutional.

Under the head of judicial interpretation we wish to refer to the thirteen actual prosecutions in California under section 2615 of the Code, pointing out to the Court that all of these cases were disposed of by the justices of the peace presiding over inferior county courts, and that none of them was ever reviewed, except the instant Edwards case, by any California court having appellate jurisdiction over these justice courts.

These prosecutions, instituted by representatives of the local county welfare departments, may also be considered as administrative interpretations of the section, at least by the three minor officials involved.

However, so far as we have been able to determine, these minor officials were acting on their own initiative, or that of the local welfare department, rather than pursuant to any general State rule or policy.

We have set forth in the supplement to this brief the docket and case histories of these cases, with as much detail and completeness as possible. (Supp., Ex. 6, pp. 58–86.)

There have been only thirteen actual prosecutions under the section, including the pending case, all of them within three of the fifty-eight counties in the State, Yuba (1), Kern (1), Tulare (11), and all during the period October 30, 1939 to February 7, 1940.

This was a time of near crisis in the migrant problem, particularly for these counties. (Supp., Ex. 1, pp. 13–14.)

In all of the cases prosecuted, the complaint was signed by a representative of the local county welfare department, except the instant case, in which it was signed by a representative of the State Controller's Office.

Of the thirteen cases in which complaints were signed, four (*Kelly* case, Supp., Ex. 6, p. 79; *Woodward* case, Supp., Ex. 6, p. 64; *Ramos* case, Supp., Ex. 6, p. 68, and *Crisp* case, Supp., Ex. 6, p. 69) never reached the stage of service of warrant and arrest, and in one (*Rankin-Morris* case, Supp., Ex. 6, p. 75) a plea of not guilty was entered but no further action taken.

The remaining eight cases were all disposed of upon a plea of guilty by the defendant, a six-months sentence imposed but suspended, generally upon certain conditions. (*Edwards* (instant) case—no condition; *George* case, Supp., Ex. 6, p. 59—reimbursement of county for expense of returning indigents; *Vaughn-Henson* case, Supp., Ex. 6, p. 80—defendants to leave county and State; *Ochoa* case, *Duncan* case, *Anderson* cases, Supp., Ex. 6, pp. 83, 80, 74—defendants to take the indigents back to origin; *Cook* case, *Jones* case, Supp., Ex. 6, pp. 65, 70—defendants to leave State and the indigents back to origin.)

Of the thirteen cases, five (*Edwards* (instant) case, *George* case, *Crisp* case, *Cook* case and *Ochoa* case) did not involve any family relationship requiring support of the indigents by the defendant; three (*Anderson* case, *Duncan* case and *Kelly* case) may have involved such relationship but fact is not definitely ascertainable and the *Kelly* case never reached the stage of service of warrant; two (*Ramos* case and *Woodward* case) did involve such relationship between the defendant and the indigents but never reached the stage of service of warrant; two (*Rankin-Morris* case and *Jones-Ensminger* case) involved such relationship between one of the defendants and the indigents; one (*Vaughn-Henson* case) involved such relationship between each of the defendants to some of the indigents.

Of the thirteen cases, three (*Edwards* (instant) case, *George* case, *Cook* case) involved the receipt of aid prior to entry into the State and the remaining ten may have involved such a situation but the fact is not definitely ascertainable.

Of the thirteen cases, all involved application for aid upon or shortly after arrival in California. (See for further particulars, Supp., Ex. 6, pp. 58.)

CONCLUSIONS RE INTERPRETATION OF WELFARE AND INSTITUTIONS CODE SECTION 2615

Having referred to all available data in the nature of administrative or judicial interpretation in California, we wish to set forth what we believe to be the conclusions to be drawn therefrom with respect to the interpretation of the section.

1. The term "indigent person", as used in the statute, means a person destitute of property or means of comfortable subsistence, without the necessities of life or resources therefor, for himself and those to whom he owes a legal duty of support, and, therefore, in need of public aid.

The term excludes those who have resources for the decent support of themselves and their families, either funds, or property that can readily be resorted to, or available credit, or relatives legally bound to support them and able and willing to do so, or friends able and willing to do so.

The term is not limited to persons who are physically or mentally incapacitated but is broad enough to include persons who from any cause are in a destitute condition.

This we believe to be the settled, well understood and accepted meaning of the term in California, as disclosed by administrative and judicial authority. Further, this is in accord with the settled meaning of the term in common usage and under the authorities in other jurisdictions, many of which we have collected in the Supplement to this brief. (Supp., Ex. 13, pp. 151–6.)

2. The statute contemplates that the condition of indigency shall exist at the time the person is brought into the State and is not in terms, or within reasonable construction, pointed to a class of persons who merely may become, or who may be said to be likely to become, indigent persons at some future time, unless the circumstances are such as to reasonably support a finding of present indigency.

3. *The statute does not purport to exclude indigent persons from the State.* Rather, the offense consists in the act of bringing, or assisting in bringing non-resident indigents into the State with knowledge of indigency.

4. A reasonable construction of the statute would, therefore, be that a person, though indigent himself, could not be guilty of the offense of bringing, or assisting in bringing, other indigent persons into the State, *if such other indigents were persons whom he was under a legal obligation to support, e.g., parent, wife or children.*

Any other construction, notwithstanding the broad terms of the statute, would be tantamount to excluding the accused solely by reason of his indigency, an offense unknown in the State and deliberately avoided by the legislature in the framing of the statute. For, within the fair meaning of the law of California and of all states which impose mutual obligations of support upon parents, children and spouses (see for support laws of California, Supp., Ex. 8, p. 96), they are one in this respect and the entry of an indigent father with his indigent wife and children is one and inseparable from the entry of the father, himself, and we cannot reasonably assume that the legislature, in framing this statute, contemplated such a result in view of its definition of the offense, *not* as the entry into the State of non-resident indigent persons, but as the bringing, or assisting in bringing, of non-resident indigent persons into the State. In such a case the indigent father does not, in our opinion, "bring or assist in bringing" indigent persons into the State within the meaning of this statute.

This approach to the construction of section 2615 has strikingly similar precedent in *Church of the Holy Trinity* v. *United States*, 143 U. S. 457, 459, 465, 472 (1891), wherein the Supreme Court of the United States, after a most thorough discussion, held that a federal statute, which prohibited the prepayment of transportation for, or the assisting or encouraging in any way of, the importation or migration of any alien or foreigner into the United States under contract or agreement to perform labor or service of any kind therein, should not be applied to a contract between a religious society and an alien religious minister whereunder the latter was to enter the United States and perform service for the society at New York as its rector and pastor. The Court pointed out that, notwithstanding the broad terms of the statute, the legislature should not be assumed to have intended such a result when framing a statute really designed to stay the influx of certain kinds of cheap unskilled labor into the United States.

5. It follows that the offense of bringing, or assisting in bringing, a non-resident indigent into the State would be committed, within the meaning of the statute, only when the accused brought, or assisted in bringing, into the State, a non-resident indigent person to whom he owed no legal duty of support and as to whom he was a mere volunteer, whatever his motives may have been.

We believe this construction of the statute is related to the mischief which the legislature must have had in mind in the framing of this statute, i. e., the more or less promotional bringing into the State of non-resident indigent persons.

An example of such situation is the operation of labor contractors, private employment services and other recruiting agencies, referred to in the survey filed by the Governor of California at the Hearings before the Select Committee of the House of Representatives, San Francisco, September 24–25, 1940, Part 6, pp. 2232, 2243, as well as other cases of bringing, or assisting in bringing, of non-resident indigents into the State, where the relationship between the accused and the indigents is merely that of volunteer, as in the case now before this Court.

This statute does not involve any particularly shocking aberration on the part of the legislature of California and, even from a very practical aspect, the bringing, or assisting in bringing into the State of a person known to be destitute by one owing no duty of support to such person is, not only an offense against the State under the terms of this statute, but may be, and most often is, a wrong against the indigent person under prevailing conditions which make it almost impossible for one to become quickly adjusted in a new community.

On the one hand, it would seem that one, who assumes the responsibility of bringing or assisting in bringing into the State a non-resident and unrelated indigent person, should extend his solicitude for such person to the point of real effectiveness by providing such means of support as would at least remove that person from the basic indigency and destitution contemplated by the statute.

On the other hand, there is no offense committed against any California statute by the entry of an indigent person, himself, or, as we believe, with his family, into California, however inadvisable that may be in particular cases both from the viewpoint of California's welfare and the welfare of the indigent himself.

If it be said that it is physically impossible for an indigent person, alone or with his family, to realize the amibition of coming to California without aid from others, then, surely, we must see, as the indigent person must also see, that aid which begins and ends with transportation to California is in reality no aid at all, and that the true alternative lies either in the patient awaiting of such aid as would be more than nominal, aid that would remove him from a condition of actual indigency upon entry into California, or in the patient accumulation by himself of such minimum resources as would remove him from such condition and make it possible for him, not only to enter California, as he has the legal right to do, but to care for himself for a reasonable time during the difficult period of adjustment in a new community.

The practical effect of this statute, therefore, even if consistently enforced, would be, not the exclusion of indigent persons from California to any appreciable extent or in any true sense of the term, but merely the punishment of those who knowingly go out of their way to impose upon the State and its counties and also upon the indigent person, without doing anything themselves to really aid the indigent.

6. Lastly, the statute in terms requires that the accused shall have had "knowledge" of the indigency. Some similar statutes in the other states require an intent to make the indigent person a charge upon the state or county but we are of the opinion that this difference is unimportant because "knowledge" of the "indigency" embraces a presumed further knowledge that the indigent person must necessarily resort to public aid, and a general, if not specific, intent, that such result will follow.

At this point we wish to refer to a case cited by counsel for appellant in his brief at page 20, *De Jonge* v. *Oregon*, 299 U. S. 353, 357, 362 (1936), in support of his statement that it is beyond the power of the State to make a crime of assisting another in the exercise of his constitutional rights.

That case involved the reversal by this court of the conviction of the defendant under one of the sections of the Criminal Syndicalism Law of Oregon for having assisted at a meeting called by the Communist Party, which was a public, orderly meeting for a lawful purpose and at which meeting neither criminal syndicalism nor any doctrine of incitement to violence was taught or advocated. The ruling of this court was upon the ground that, the meeting itself being nothing more than the lawful exercise of the right of free speech, defendant could not be guilty of any offense for assisting in the conduct of the meeting.

There is nothing in that opinion inconsistent with the power of a state to define as an offense the act of bringing, or assisting in bringing, an indigent person into the state when the state in the exercise of its police power reasonably determines that such act of bringing or assisting in bringing an indigent person into the state is, in itself, and apart from the possible right of such indigent to enter the state himself, related to a problem affecting the health, morals or general welfare of the state, i. e., the stimulation of an influx into the state of destitute persons without necessity therefor and contrary to the natural course of migration to the state.

Restatement of the Issue Presented to the Court

Having stated our conclusions concerning the interpretation of section 2615, we restate what we believe to be the issue presented to the Court.

The issue is, not the power of the State to exclude indigent persons, for the legislature of California has not attempted to exercise such power in this statute, but is merely the power of the State to define as an offense the act of bringing, or assisting in bringing, indigent persons into the State with knowledge of such indigency and without such relationship toward the indigents as would impose the legal bond of care and support.

This, in turn, suggests the more fundamental issue of whether the State has the power to recognize the effect of an influx of destitute or indigent persons into the State upon the health, morals and general welfare of the State and to determine how far it will legislate, short of absolute exclusion of indigents, in order to alleviate to some extent the burden of indigency in the State.

Here, the State has seen fit merely to prohibit others from bringing, or assisting in bringing, indigent, destitute persons into the State, wilfully and without legal necessity therefor, the legislature apparently having determined that such act, in itself, is related to the problem at hand, and that its prohibition is an appropriate means of controlling the problem and the limit to which the legislature deems it wise to go.

Evidently, this was done upon the theory that, although the legislature was willing to allow immigration of indigent persons into the State to follow a normal course, it was desirous of preventing, in the interest of the welfare of the state, such an artificial promotion and stimulation of the influx as would increase the migration and render its effect more serious and acute.

The Constitutionality of Section 2615

(A) REFERENCE TO AUTHORITY IN POINT

Before discussing the various specifications of unconstitutionality, upon which appellant relies, we wish to refer to such authority as we have found to be either precisely or closely in point with the pending case.

We have set forth in the Supplement to this brief, Supp., Ex. 10, pp. 115–120, a collection of cases from other jurisdictions which involved statutes identical with or substantially the same as section 2615.

The courts of Connecticut, New York, Vermont, Michigan, New Hampshire and Ohio, considering similar statutes in cases involving the bringing of indigents from outside the State, have upheld convictions (Conn., New York, Vermont, New Hampshire) or have reversed convictions upon grounds other than unconstitutionality. (Ohio, Michigan.)

See:

Barkhamsted v. *Parsons*, 3 Conn. 1 (1819) (Supp. Ex. 10, p. 115);
Windfield v. *Mapes*, 4 Denio 571; 17 N. Y. C. L. 676 (1847) (Supp. Ex. 10, p. 116);
Dover v. *Wheeler*, 51 Vt. 160 (1878) (Supp. Ex. 10, p. 116);
Poor v. *Nelson*, 42 N. W. 797 (Mich., 1889) (Supp. Ex. 10, p. 117);
State v. *Cornish*, 66 N. H. 329; 21 Atl. 180 (1890), (Supp. Ex. 10, p. 117);
Risner v. *The State*, 55 Ohio App. 151; 9 N. E. (2nd) 151 (1937), (Supp., Ex. 10, p. 118).

In New York, Illinois and Colorado the courts have upheld convictions under similar statutes in cases involving transportation from one county to another within the state.

See:

Thomas v. *Ross & Shaw*, 8 Wend. 671; 11 N. Y. C. L. 509 (1832), (Supp. Ex. 10, p. 115);
Williams v. *Franklin*, 39 Ill. 21 (1865), (Supp. Ex. 10, p. 116);
Commissioner v. *Law*, 3 Colo. App. 328; 33 Pac. 143 (1893), (Supp. Ex. 10, p. 118).

In the *Risner* case, supra, Ohio (1937), the case turned upon the sufficiency of the evidence to show that the person brought from Kentucky to Ohio was a "poor or indigent person" within the meaning of the statute, and the court defined this term as follows:

> "Applying these definitions to the provisions of section 2555, General Code, it is clear that the words 'poor or indigent' modifying the word 'person' are either synonymous as indicating those who are entirely destitute and helpless and therefore dependent on public charity, or that the word 'poor' is used in the technical sense as indicating one who is actually receiving public aid, and the word 'indigent' is used in the nontechnical sense as meaning one destitute and a proper subject for public aid."

We have found no case in which a statute similar to section 2615 has been held to be unconstitutional.

We have also set forth in the Supplement to this brief a collection of cases based on statutes authorizing removal of poor or indigent persons from one county to another or from one state to another. (Supp., Ex. 11, pp. 121–124.)

The courts of Minnesota, Illinois, Connecticut and Pennsylvania have upheld statutes providing for the removal of poor or indigent persons from one county to another on the basis of settlement or residence, and North Dakota has ruled against removal to a point outside the state upon the ground that the particular statute only provided for removal within the state.

See:

Lovell v. *Seeback*, 45 Minn. 465; 48 N. W. 23 (1891), (Supp., Ex. 11, p. 121);
Town of Bristol v. *Town of Fox*, 159 Ill. 500; 42 N. E. 887 (1896), (Supp., Ex. 11, p. 122);
Harrison v. *Gilbert*, 71 Conn. 724; 43 Atl. 190 (1899), (Supp., Ex. 11, p. 123);
In re Barnes, 119 Pa. (Sup. Ct.) 553; 18 Atl. 718 (1935), (Supp., Ex. 11, p. 123);
Anderson v. *Miller*, 120 Pa. (Sup. Ct.) 463; 182 Atl. 742 (1936), (Supp., Ex. 11, p. 124);
Hillborn v. *Briggs*, 226 N. W. 737 (N. D. 1929), (Supp., Ex. 11, p. 123);
Overseers of Gilpin v. *Overseers of Park*, 11 Atl. 791 (Pa. 1888), (Supp., Ex. 11, p. 121).

In addition to the above cases, we wish to invite the Court's attention to the recent case, *In re Chirillo*, 283 N. Y. 417, 28 N. E. (2nd) 895 (1940), (Supp., Ex. 11, pp. 124–133).

Chirillo, a naturalized citizen of the United States, lived in Ohio but moved to New York. A New York statute provided that a person, who was cared for at the expense of the state, or a public welfare district, and who belonged to or had friends willing to support or aid in supporting him in any other state or county, might be removed by the State Department of Social Welfare to such state or county, provided that in the judgment of the department the interest of the state and the welfare of such person will be thereby promoted. If the person refuses to go, the Department may apply to the county judge for an order of removal to the state legally responsible for and willing to support him. (Public Welfare Law of New York, Sec. 71.)

The point upon which the decision in the above case turned was whether the appeal to the appellate court presented solely the question of the constitutionality of the statute.

A majority of the New York Court of Appeals took the view that the question of constitutionality could not be considered on appeal because that question depended upon the construction of the statute, which question was raised by appellant, and that the Court of Appeals was, therefore, without jurisdiction to act at all, and dismissal of the appeal was ordered.

This view of the majority four justices prevented an express determination by the New York Court of Appeals of the constitutionality of the New York statute, but a minority of three justices took the view that the Court of Appeals did have jursidiction to determine the constitutionality of the statute, discussed the constitutional question exhaustively, and held that the statute was valid notwithstanding appellant's contention that it violated the due process and equal protection clauses of the Fourteenth Amendment, the commerce clause, the privileges and immunities clause of Article IV, Section 2, and the privileges and immunities clause of the Fourteenth Amendment.

This dissenting opinion, which does not, like so many dissents, oppose the majority opinion but discusses points not considered at all by the majority, is so related to the pending question that we have set forth for the convenience of this court considerable quotation from the opinion, Supplement Exhibit 11, p. 124–133

(B) SECTION 2615 DOES NOT CONTRAVENE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

The contention that this statute contravenes the due process clause of the Fourteenth Amendment cannot be sustained, unless it can be said that the statute has no relation to the public welfare of the people of the State.

In *Nebbia* v. *New York*, 291 U. S. 502, 525 (1933) this Court said:

> "The Fifth Amendment, in the field of federal activity, and the Fourteenth as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."

The fact that legislation of this kind has been long in force upon the statute books of many states and assumed to be an appropriate method of dealing with the problem of migratory indigency is in itself strong proof of its reasonableness as an exercise of the police power of a state.

In *Coler* v. *Corn Exchange Bank*, 250 N. Y. 136; 164 N. E. 882 (1928), Justice Cardozo, upholding a statutory seizure of property of a husband absconding from a wife and child likely to become paupers, said:

> "The Fourteenth Amendment, itself a historical product, did not destroy history for the states and substitute mechanical compartments of law all exactly alike. If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it. *Jackman* v. *Rosenbaum Co.*, 260 U. S. 22, 31; 43 Sup. Ct. 9.
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> "This background of tradition gives the setting of the statute and the method of approach when today its validity is challenged."

The influx of transient indigent persons into the state not only taxes the resources of the citizens of the state in order to meet an actual condition, which from every instinct of humanity must to some degree be met, but it affects housing, moral, health and working conditions within the state.

"Rejected applicants continue to be a part of the economic structure of the county or state in which they are present and therefore affect the social and economic conditions in the state."

See:

Rubinow Survey, Supp. Ex. 1, p. 20;
Resolutions of the Legislature, Supp. Ex. 2, pp. 25–35.

We have already pointed out that the act of wilfully bringing, or assisting in bringing, indigent persons into the State, without any bond of legal support, is, in itself, an act amounting to the promotion and stimulation of an influx of indigency, over and beyond the natural course of migration, an act, in itself, related to the social and economic problem of the State, and, therefore, a proper subject for legislative prohibition in the exercise of the State's police power.

(C) SECTION 2615 DOES NOT CONTRAVENE THE COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES

Upon this point we invite the attention of the Court to the constantly reiterated statement of this Court, in cases involving state statutes claimed to contravene the commerce clause, that the states have the power to exclude paupers, and those likely to become such, in the exercise of the police power and for the purpose of defending themselves from the conditions that result from an influx of such persons into the state.

For the convenience of this Court we have collected excerpts from these cases in the Supplement to this brief, Supp. Ex. 13, p. 134. These cases are:

Mayor of New York v. *Miln*, 11 Peters 102, 141–2, 147–8, 153b, 153, 153n, 155; 36 U. S. 71 (1837) (Supp. Ex. 12, p. 134);
Prigg v. *Pennsylvania*, 16 Peters 539, 41 U. S. 536, 624 (1842) (Supp. Ex. 12, p. 140);
License Cases—Thurlow v. *Massachusetts*, 5 Howard 504, 46 U. S. 590, 596 (1847) (Supp. Ex. 12, p. 141);
Passenger Cases—Smith v. *Turner* and *Morris* v. *Boston*, 7 Howard 283; 48 U. S. 300, 424–426 (1849), (Supp. Ex. 12, p. 141);
Henderson v. *The Mayor of New York*, 92 U. S. 259, 275 (1875) (Supp. Ex. 12, p. 144);
Chy Lung v. *Freeman*, 92 U. S. 275, 280 (1875), (Supp. Ex. 12, p. 145);
Railroad Company v. *Husen*, 95 U. S. 465, 470, 472–3 (1877), (Supp. Ex. 12, p. 146);
Plumley v. *Massachusetts*, 155 U. S. 461, 478 (1894), (Supp. Ex. 12, p. 147);
Missouri, Kansas & Texas R. R. Co. v. *Haber*, 169 U. S. 613 (1897), (Supp. Ex. 12, p. 147);

See also:

Japanese Immigrant Case—Kaoru Yamamatu v. *Fisher*, 189 U. S. 86, 97 (1902) (Exclusions by federal statute within police power clause of treaty), (Supp. Ex. 12, p. 148.)

See also:

Sweeney v. *State Board of Public Assistance*, 36 Fed. Supp. 171 (Dist. Ct., Pa. 1940) (Supp. Ex. 12, p. 149).

It is true that some of these cases struck down the particular state statutes involved upon the ground that they were not limited to the exclusion or control of paupers, and like persons, but applied to all immigrants in such manner as to indicate that they were not true police measures. *Prigg, Passenger, Henderson, Chy Lung* and *Husen* cases.)

It is also true that in other of these cases the reference to paupers, although in support of the principle of the decision, was dicta in view of the particular facts before the Court. (*License, Plumley, Haber* cases.)

In all of them, however, the Court stressed the power of a state to protect itself from an influx of persons without means of supporting themselves; the heavy charge of maintaining such persons; the likelihood of health, moral and other injurious conditions resulting therefrom; the similarity of so-called pauper laws to quarantine laws; the power of the state to determine what class of persons may injuriously affect the state or bring the burden of a numerous pauper population; and the power of the state to enact necessary statutes limited to these objects.

The statute before the Court in the pending case is so well within the dicta of the above cases that it is not necessary for this Court to apply such dicta to its full extent, because: (1) Section 2615 does not exclude indigents at all; (2) it merely prohibits acts of other persons which tend to promote and stimulate the influx of paupers, which, according to the above dicta, could be absolutely excluded: (3) it does not, in our opinion, even prohibit such acts when the indigents are within the family ties of legal support; (4) it refers only to a limited class of persons, indigents, i. e., persons who at the time of entry into the State are destitute of property or resources, of their own, or of responsible relatives, or provided by friends, with which to support themselves and families, and dependent, therefore, on public aid.

Certainly, no distinction can be made between such "indigent person" and the "pauper" referred to by the Court.

We do not propose to enter upon any lengthy analysis of the development of the interpretation of the commerce clause by this court with respect to its negative implications pertaining to state action: or with respect to whether the commerce clause is exclusive of, or concurrent with, state action and, if concurrent, in what particular classifications of legislation; or with respect to whether state legislation is to be judged according to its purpose or its effect, or both.

We merely invite the attention of the Court to the line of cases in this Court which, we believe, state the principle applicable to the pending case, commenting more particularly upon several cases deemed important because of the close fact analogy or because of the recentness of the statement of the rule concerning the permissible filed of state action.

The line of cases, holding that the several states have the power, in the absence of federal action and notwithstanding possible effect on interstate commerce, to pass local quarantine, and other regulatory laws, applicable to merchandise, carriers or persons moving in interstate commerce, as a means of protecting the local health, safety and welfare, includes cases like the following:

Morgan's S. S. Co. v. *Louisiana Board of Health*, 118 U. S. 455 (1886), upholding, in the absence of federal action, state statute requiring fee of vessels entering ports pursuant to state quarantine system.

Compaigne Francais v. *Louisiana Board of Health*, 186 U. S. 380 (1902), upholding, in the absence of federal action, state statute authorizing exclusion of all persons, healthy or not, from a state locality of contagion, irrespective of interstate movement of persons.

Eicholz v. *Public Service Commission*, 306 U. S. 268 (1938), upholding, in the absence of federal action, rule requiring an interstate carrier to accept no intrastate business without intrastate license, on ground state could protect its legitimate interests through interstate commerce directly affected.

Willson v. *Blackbird Creek Marsh Co.*, 2 Peters 244, 250 (1829), upholding, in the absence of federal action, state statute authorizing damming of navigable interstate inlet where designed to eliminate marsh menace to health of inhabitants of state.

Plumley v. *Massachusetts*, 155 U.S. 461 (1894), upholding, in absence of federal action, state statute prohibiting sale of artificially colored oleomargarine upon ground of protection of public from deception and upon same principle empowering state to exclude paupers. (See Supp. Ex. 12, p. 147.)

Whitefield v. *Ohio*, 297 U.S. 431, 439 (1936), upholding state statute prohibiting the sale of convict-made goods apparently on ground that state could protect itself against an economic evil, regardless of the Act of Congress lifting the bar of the original package rule in such case.

One of the most interesting of this line of cases is *Bradley* v. *Public Utilities Comm. of Ohio*, 289 U.S. 92, 95, 96 (1932), in which this Court upheld the denial by the Ohio Commission of a certificate to an interstate motor carrier for use of a state highway, where the denial was upon the ground that the particular highway was already so badly congested by established motor vehicles that the proposed service would create a hazard to the safety of the public upon the highways. The court said:

> "Protection against accidents, as against crime, presents ordinarily a local problem. Regulation to ensure safety is an exercise of the police power. It is primarily a state function, whether the *locus* be private property or the public highways. Congress has not dealt with the subject. Hence, even where the motor cars are used exclusively in interstate commerce, a State may freely exact registration of the vehicle and an operator's license,

> *Hendrick* v. *Maryland*, 235 U.S. 610, 622; *Clark B. Poor*, 274 U.S. 554, 557; *Sprout* v. *South Bend*, 277 U.S. 163, 169; may require the appointment of an agent upon whom process can be served in an action arising out of operation of the vehicle within the State, *Kane* v. *New Jersey*, 242 U.S. 160; *Hess* v. *Pawloski*, 274 U.S. 352, 356; and may require carriers to file contracts providing adequate insurance for the payment of judgments recovered for certain injuries resulting from their operations. *Continental Baking Co.* v. *Woodring*, 286 U.S. 352, 365–366. Compare *Packard* v. *Banton*, 264 U.S. 140; *Sprout* v. *South Bend*, 277 U.S. 163, 171–172; *Hodge Co.* v. *Cincinnati*, 284 U.S. 335, 337. The State may exclude from the public highways vehicles engaged exclusively in interstate commerce, if of a size deemed dangerous to the public safety, *Morris* v. *Duby*, 274 U.S. 135, 144; *Sproles* v. *Binford*, 286 U.S. 374, 389–390. Safety may require that no additional vehicle be admitted to the highway. The Commerce Clause is not violated by denial of the certificate to the appellant, if upon adequate evidence denial is deemed necessary to promote the public safety. Compare *Hammond* v. *Schappi Bus Line*, 275 U.S. 164, 170–171."

So, in the pending case, it may be said that section 2615 of the Code is obviously based upon the legislative determination that the relief "highways" of the state are already so badly congested that acts of persons producing a further influx of destitute persons, i.e., over and above the normal immigration of the indigents themselves, will create a hazard to the health, safety and welfare of the established inhabitants of the state.

The most recent of this line of cases is *California* v. *Thompson*, 61 Sup. Ct. 930, April 28, 1941, in which the court considered a California statute requiring every transportation agent to procure a license from the State Railroad Commission, pay a license fee therefor, and file a bond for the faithful performance of transportation contracts.

The Court, holding that the statute was not a revenue measure but a valid police measure, and overruling *Di Santo* v. *Pennsylvania*, 273 U.S. 34, said:

> "As this Court has often had occasion to point out, the Commerce Clause, in conferring on Congress power to regulate commerce, did not wholly withdraw from the states the power to regulate matters of local concern with respect to which Congress has not exercised its power, even though the regulation affects interstate commerce. * * *
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> "The present case is not one of prohibiting interstate commerce or licensing it on conditions which restrict or obstruct it. Cf. *Crutcher* v. *Kentucky*, 141 U. S. 47, 11 S. Ct. 851, 35 L. Ed. 649; *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282, 42 S. Ct. 106, 66 L. Ed. 239. For here the regulation is applied to one who is not himself engaged in the transportation but who acts only as broker or intermediary in negotiating a transportation contract between the passengers and the carrier. The license required of those engaged in such business is not conditioned upon any control or restriction of the movement of the traffic interstate but only on the good character and responsibility of those engaged locally as transportation brokers.
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> "Fraudulent or unconscionable conduct of those so engaged which is injurious to their patrons, is peculiarly a subject of local concern and the appropriate subject of local regulation. In every practical sense regulation of such conduct is beyond the effective reach of Congressional action. Unless some measure of local control is permissible, it must go largely unregulated. In any case until Congress undertakes its regulation we can find no adequate basis for saying that the Constitution, interpreted as a working instrument of government, has foreclosed regulation, such as the present, by local authority.
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> "If there is authority in the state, in the exercise of its police power, to adopt such regulations affecting interstate transportation, it must be deemed to possess the power to regulate the negotiations for such transportation where they affect matters of local concern which are in other respects within state regulatory power, and where the regulation does not infringe the national interest in maintaining the free flow of commerce and in preserving uniformity in the regulation of the commerce in matters of national concern. See *Hartford Accident & Indemnity Co.* v. *Illinois*, 298 U. S. 155, 56 S. Ct. 685, 80 L. Ed. 1099."

We believe that section 2615 of the Code is well within the rule established by the foregoing authorities.

1. It does not in terms exclude any indigent person, nor does it in effect exclude any indigent family.
2. It applies only to other persons, whether citizens of California or any other state, who, as volunteers and without any tie of legal support to the indigent, knowingly bring, or assist in bringing, indigent persons into the State.
3. Such act of stimulating, promoting or assisting an influx of destitute persons, over and above a normal entry of indigents themselves, is, in itself, related to a local problem affecting the health, safety, welfare and economic resoures of the state.
4. The statute, in its reference to indigent persons, contemplates only a limited class of persons, i. e., persons so destitute of means for the support of themselves and their families as to be dependent on public aid.
5. Congress has not acted in the field of regulating the movement of such persons between states but has merely made available some funds to assist in their care after arrival, and even in this respect the aid consists merely in the permissive use by certain Federal agencies of such appropriations as may be available, there being no permanent or comprehensive Federal plan for the purpose. (See Supp. Ex. 8, pp. 100, 105.)

Congress has acted to exclude alien "paupers", "professional beggers", "vagrants", "persons likely to become a public charge" and "persons whose ticket or passage is paid for by the money of another, or who are assisted by others to come * * *," (USCA, Tit. 8, Sec. 3) but has not provided any similar legislation for interstate migration.

(D) SECTION 2615 OF THE CODE DOES NOT CONTRAVENE THE PRIVILEGES AND IMMUNITIES CLAUSE OF ARTICLE IV, SECTION 2 OF THE UNITED STATES CONSTITUTION

It is first necessary to bear in mind the true meaning of the constitutional provision: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

In the *Slaughter-House Cases*, 83 U. S. 36, 75 (1872) the Court, reviewing the various constitutional provisions claimed to be contravened by the Louisiana slaughter-house monopoly statute there involved, refers to Art. IV, Sec. 2 of the Constitution and holds that it was intended to be the same as Article IV of the Articles of Confederation.

The Court said:

> "There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the article of Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase."

Article IV of the Articles of Confederation was substantially the same as the present constitutional provision except that it contained a specific clause to the effect that "* * * the people of each state shall have ingress and regress to and from any other state * * *."

But, the Articles of Confederation *expressly excepted "paupers, vagabonds and fugitives from justice"* from those inhabitants of each state entitled to all privileges and immunities of the citizens of the several states.

That Article IV, Section 2 of the Constitution was drawn with reference to the corresponding clause of the Articles of Confederation and was intended to perpetuate the limitations of the former is declared to be settled law in *United States* v. *Wheeler*, 254 U. S. 281, 296 (1920).

In the words of Pinckney, who was a signer of the Consitution, Article IV, Section 2 of the Constitution was "formed exactly upon the principles of the fourth article of the present confederation."

Farrand, Records of the Federal Convention (1911) Vol. I–III, p. 112, 445.

It is clear, therefore, that any fundamental privilege and immunity of ingress and regress to the states, implied in Art. IV, Sec. 2 of the Constitution, must be read in the light of the implied exception with respect to "paupers, vagabonds and fugitives from justice."

This construction of the constitutional provision is of the utmost importance and must have been deliberately planned by the framers because, otherwise, the then long established custom, and the present general policy, of the several states, to set up residence or settlement restrictions in their poor laws and relief statutes would be of questionable validity.

These residence or settlement provisions invariably restrict state aid and relief of indigents, the unemployed, the aged and the incapacitated, to residents of the state and discriminate against transient or recently arrived citizens of other states.

If it be held that under Article IV, Section 2 of the Constitution, states may not control ingress into the state of paupers (i. e., persons so destitute of means of support as to be dependent on public aid), who enter the state as citizens of other states, then, logically and for the same reason, the state could not withhold from such class of persons, solely on the ground of non-residence, those rights and privileges of public aid and relief which the state deems proper to extend to its own citizens.

This would, indeed, be a most amazing result, a result contrary to the practice of the states and the views of state courts upon the subject.

In *People* v. *Lyons*, 30 N. E. (2nd) 46, 51 (1940), the Supreme Court of Illinois considered the contention of a relief applicant that the residence condition, with which he had not complied, was a denial of due process and equal protection under both the State and the United States Constitution. The Court said:

> "* * * In particular, the classification of beneficiaries such as paupers, while not only permissible, but also necessary, must none the less be reasonable. In re Opinion of the Justices, supra. The judiciary will not interfere with such classification when made unless it is clearly unreasonable. *Punke* v. *Village of Elliott*, supra.
>
> "Since there is no legal obligation upon the State, or any governmental unit, in the absence of legislative action, to support its poor, it follows, necessarily, that a large degree of discretion rests upon the State when it elects to furnish relief. The Pauper's Act has long imposed a burden upon local governments which, in recent years, has become increasingly heavy. The enactment under consideration reflects the attempt of our General Assembly to ameliorate the burden by reducing it to the care of those individuals who have resided a minimum of three years in a particular govmental unit. The manifest legislative intent is to furnish relief to residents of local communities who, by reason of unemployment or otherwise, are destitute and in necessitous circumstances. Section 16 thus mirrors an intention to assure relief to such citizens by discouraging a steady influx of unfortunate transients from other jurisdictions settling in Illinois for the primary purpose of qualifying as future recipients of the State's benevolence. Apparently, the legislature concluded that the absence of any restrictions as to residence, or a less onerous requirement, might induce unemployed residents of and destitute persons from other States to avail themselves of the more generous provisions of our laws. In short, section 16 as amended in 1939, represents a legitimate attempt to prevent Illinois and our local governmental units from becoming a haven of the transient poor seeking the most advantageous statutory provisions granted those requiring assistance and, perhaps, thereby reducing the aid to which permanent residents of Illinois should justly have first claim. It cannot be said as a matter of law that the period of residence bears an unreasonable relation to the subject of poor relief."

There is, however, another reason why the appellant in the pending case cannot avail himself of this particular constitutional provision.

It has long been the interpretation of Article IV, Section 2, that it does not create the rights which it calls "privileges and immunities", nor does it profess to control the power of the state governments over the rights of their own citizens.

In the *Slaughter-House cases*, supra, at p. 77, the Court, speaking of Article IV, Section 2, said:

> "Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction."

In *Estate of Johnson*, 139 Cal. 532, 535–6, (1903) the Supreme Court of California, holding valid, despite claim of invalidity under this article, an exemption from state inheritance tax of "nephews and nieces when residents of the state", followed the decisions of the United States Supreme Court to the effect that this article does not operate to strike down a state statute but operates merely to extend the privileges and immunities of the statute to citizens of other states notwithstanding the limitations of the statute.

Therefore, even if Article IV, Section 2, applied to paupers and indigent persons dependent on public aid, and even if section 2615 could be held to deprive noncitizen indigent persons of a right of ingress accorded to citizen indigent persons, the statute would not be for that reason void. The only result would be that the noncitizen indigent, ie., Duncan in the pending case, could assert his right to ingress to the state in a proper case, if he was being in fact deprived of such privilege.

Edwards, the appellant in the pending case, however, is not a citizen of another state, but a citizen of California; he has not been deprived of ingress for indigency or any other reason. He is not, therefore, of the class of persons that might be injured by this statute, at least as far as the privileges and immunities clauses of Article IV, Section 2, or of the Fourteenth Amendment are concerned, and cannot raise the question of its invalidity under those provisions.

> *Red River Valley Co.* v. *Craig*, 181 U. S. 548, 558; *Estate of Johnson*, supra. p. 534.

(E) SECTION 2615 OF THE CODE DOES NOT CONTRAVENE THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE FOURTEENTH AMENDMENT.

This provision of the Constitution to the effect that "no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States" has long been limited, and most recently by *Madden* v. *Kentucky*, 309 U. S. 83, 90 (1939), overruling *Colgate* v. *Harvey*, 296 U. S. 404 (1935), to the protection of rights peculiar to national citizenship, as distinct from the fundamental or natural rights inherent in State citizenship.

See also:

> *Hague* v. *CIO*, 307 U. S. 496, 519–20 (Justice Stone); Conf. p. 512 (Justice Roberts).

The right of persons to move across state boundaries is not referable to the privileges and immunities clause of the Fourteenth Amendment.

In *Colgate* v. *Harvey*, 296 U. S. 404, 443–444 (dissenting opinion of then Justice Stone), the dissenting justice pointed out that *Crandall* v. *Nevada*, 6 Wall. 35, (which was noted in *Twining* v. *New Jersey*, 211 U. S. 78, 97 (1908)) has been overruled by *Helson* v. *Kentucky*, 279 U. S. 245, 251 (1929) in so far as it referred the subject of interstate movement to the privileges and immunities clause rather than to the commerce clause.

Moreover, even if the privileges and immunities clause of the Fourteenth Amendment covers the right of ingress and egress between states, it does not, when read in the light of the exception implied in Article IV, Section 2, in respect to paupers and in the light of the reiterated pronouncements of the Supreme Court with respect to paupers, apply to ingress and egress of paupers, persons so destitute as to be dependent on public aid.

Lastly, as we have heretofore pointed out in our comment upon the privileges and immunities clause of Article IV, Section 2, appellant in the pending case is in no position to assert the invalidity of section 2615 of the Code under these particular constitutional provisions because he has not been deprived of any privilege or immunity thereby secured, even if it be assumed that an indigent resident of another state could rely upon them in a proper case.

CONCLUSION

We trust that this brief, and the separate supplement filed herewith, will be helpful to the Court in its determination of the important constitutional questions here involved.

Our main purpose has been to assist the Court by providing the background necessary for an understanding of the policy and purpose of the State of California concerning the subject to which section 2615 of the Code relates.

We feel that this Court will be in a better position to approach the question without resort to appellant's hasty imputation to California of the hard and selfish purpose of preventing "the common man from exercising the rights which may be exercised by one whose sole distinction rests in the number of dollars he possesses."

Rather, let it be said that the State policy of California concerning a serious problem and the very limited purpose of the State in the enactment of section 2615 of the Code are not only consistent with, but proof of, the fact that California's only purpose has been to restrain its characteristic generosity and friendliness by practical solicitude for the welfare of its own citizens and those of sister states.

It is possible that future Congressional action or further State consideration may solve this problem in a more idealistic manner.

Until then, however, all things considered and section 2615 of the Code understood in the light of its true purpose and actual effect, there is, we most respectfully submit, no constitutional ground upon which the Court should strike this law from the statute books of California.

Dated, San Francisco, California, October 10, 1941.

Earl Warren,
Attorney General of the State of California,
W. T. Sweigert,
Assistant Attorney General of the State of California.
Hiram W. Johnson, 3rd,
Deputy Attorney General of the State of California.
Attorneys for Appellee.

Exhibit No. 8.

In the Supreme Court of the United States. October Term, 1941. No. 17. Fred F. Edwards, *Appellant*, vs. The People of the State of California, *Appellee and Respondent.* Earl Warren, Attorney General of the State of California; W. T. Sweigert, Assistant Attorney General of the State of California; Hiram W. Johnson, 3rd, Deputy Attorney General of the State of California, 600 State Building, San Francisco, California; Attorneys for Appellee.

SUPPLEMENT TO BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA ON BEHALF OF APPELLEE

EXHIBIT 1.—*Statement of S. G. Rubinow, Administrator, California State Relief Administration, Prepared by Bureau of Statistics, California State Relief Administration, E. M. Cooper, Chief.**

THE PROBLEM OF INTERSTATE MIGRATION AS IT AFFECTS THE CALIFORNIA STATE RELIEF ADMINISTRATION

FUNCTIONS OF THE STATE RELIEF ADMINISTRATION

The State Relief Administration of California is the agency of the State which administers unemployment relief to the employable unemployed who are not cared for under the program of the Federal Work Projects Administration.

The State relief administration extends aid to the unemployed entirely from State funds and through its own offices located throughout the State. The county welfare departments of the State of California do not enter directly into the picture of unemployment relief.

The State relief administration was first created as the State emergency relief administration in the spring of 1933 to distribute funds of the Reconstruction Finance Corporation to the county agencies. The Governor appointed an emergency relief administrator as the executive officer of the agency and an emergency relief commission to aid the administrator in determining relief policies.

In July 1933, the Federal Emergency Relief Administrator appointed the State emergency relief administration as the executive body to administer the distribution of Federal funds in California. The State emergency relief administration continued to act in that capacity until Federal funds were withdrawn and the Work Projects Administration created in 1933. (sic) Since that time the State emergency relief administration (now the State relief administration) has cared for the unemployed for whom security wage employment is not available on projects of the Work Projects Administration, either because of ineligibility to the Work Projects Administration or because of lack of sufficient quota by the Work Projects Administration.

The State relief administration is also the State agency which administers a number of other Federal programs in California. It is the certifying agency of persons eligible to Work Projects Administration and National Youth Administration. It supervises enrollment of boys in the Civilian Conservation Corps in California. It conducted the college student aid and emergency education programs prior to the establishment of the National Youth Administration. Together with the Work Projects Administration and the Federal Surplus Commodity Corporation, it has distributed millions of dollars worth of surplus commodities in California. It operates the school lunch program for needy children. The State relief administration now administers the Federal stamp plan (food and cotton) in California which is gradually expanding and taking the place of the surplus commodity distribution program.

The State relief administration and the transient programs.—In the depths of the 1932 and 1933 depression California localities were overburdened with care of their own residents needing aid and were legally not responsible for those persons who did not meet the residence requirements under the State's Indigent Act, the most important provision of which required 3 years of independent residence in the State before application for relief.

"In the small cities, transients were frequently forced to move on by the police. In the large cities, some shelter and food were given by public agencies but the missions and other religious types of agencies gave most of this limited assistance.

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*NOTE: This Survey was introduced as an exhibit at p. 2871 of the Hearings (Los Angeles, September 28, 1940) before the Select Committee to Investigate the Interstate Migration of Destitute Citizens, House of Representatives, held pursuant to H. Res. 63 and H. Res. 491, Seventy-sixth Congress, Third Session.

Conditions were wretched. 'Flop houses' were overcrowded, food was poor, and sanitary facilities were inadequate. Transients and homeless residents were treated alike in the shelters, men and boys mingled, and there was no separation of the diseased from the healthy. Those not accommodated in the shelters often found a night's lodging in the city jails or a longer residence in the 'shanty towns' and 'jungles' that sprang up on the outskirts of the cities. Families and single men lived partly on the limited public charity available and partly from begging and 'panhandling,' or even from petty theft."[1]

In response to such conditions prevailing throughout the country, the Federal Government accepted responsibility for the care of persons who had been in the State less than 1 year through the Federal Emergency Relief Act of 1933.

"Financed with Federal funds, a transient program was established by the State relief administration beginning in September 1933. Conforming to Federal policy, the first task was to provide sufficient shelters in the various cities to accommodate the homeless, and then to establish work camps to which were sent transients who agreed to accept care and a nominal cash wage in exchange for work on useful public projects. Families were cared for through work and direct relief provided by family bureaus located in the cities. By April 1935, the system of transient units throughout the State included 17 family service bureaus, 39 camps for men and boys, and 17 shelters. In addition, the Transient Division supervised 18 camps for homeless residents of California.

"Although the program sought by means of work, education, and recreation to rehabilitate the transient men, their persistent tendency to move on from shelters and camps nullified much of the constructive effort. This could not be stopped because of the ease with which the men could find temporary shelter in the cities under assumed names. Many of the boys also continued migration even after being enrolled in one of the boys' camps. Only the families showed stability, lacking inducements to travel on and generally remaining in the cities.

"Health problems were common among the transients, particularly venereal diseases among the men. Mental and emotional disturbances also were a common result of the unstable conditions accompanying migration. Temporarily, at least, the camp program restored most of the men to more normal living habits.

"The transient program was liquidated between September and December 1935, in accordance with Federal policy to either return transients to their States of residence for employment by the Works Progress Administration, or to absorb as many as possible on the projects of the California Works Progress Administration. The acceptance of new applicants was sharply curtailed during this period when attempts were made to deal individually with each case already under care. However, many men continued to leave camps and shelters for the road. As a result of this circumstance plus the influx of transients from other States during the usual winter migration, and the loss of employment by many transients engaged in seasonal agricultural work, the uncared-for population increased considerably. By the end of the year, 'jungles' and 'shanty towns,' begging and 'panhandling' were once more in evidence. Although they were on a smaller scale than in 1933, they still were serious symptoms of what appears to be a chronic transient problem in California."[2]

Further important details concerning the nature and size of the transient program in California are presented in a "Review of Activities of the State Relief Administration of California, 1933–35," chapters VIII and IX, pages 167 to 200.

LEGISLATION AND RELIEF POLICIES CONCERNING RESIDENCE

Under the Federal Emergency Relief Act of 1933, the Federal Emergency Relief Administration established a transient division to extend grants to States for transient relief, providing assistance to persons lacking 1 year's residence in the State of application for aid. Individuals who had been in a given State more than 1 year were considered a responsibility of that State under the Federal Emergency Relief Act of 1933.

For a number of years, to be eligible for indigent aid through the county welfare departments of California, a person had to have 3 years of independent residence, that is, he must have resided in California for three years or more intending to establish his home here; and during this period he must not have received any public or private assistance other than from legally responsible relatives.

Cooperating with the Federal relief programs the State relief commission, appointed by the Governor, established a 1-year residence rule for aid to the unemployed from State funds. This conformed with the Federal plan of accepting as a Federal responsibility those persons who lacked 1 year's residence, leaving to the State responsibility for persons of more than 1 year's residence.

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[1] Review of activities of the State Relief Administration of California, 1933–35, p. 28.

[2] Review of Activities, op. cit., pp. 28–29.

In its relief activities, California, therefore, established a transient program separate from its resident program. Persons were cared for under the resident program out of State and Federal funds if they had been in California for 1 year or more. Those persons who had been in the State for less than 1 year were cared for out of Federal funds under the transient program which was liquidated in 1935.

However, since the State Emergency Relief Administration still had a residue of the Federal funds granted to California for this purpose, persons who had less than 1 year's residence continued to be accepted for aid by the State Relief Administration. Effort was made to verify legal residence and, upon receipt of authorization from the State of residence, these persons were returned thereto. If the relief recipient refused to return to his State of residence, aid in California was discontinued unless good social reasons existed for the continuance of aid. If a family was without residence in any State, aid was continued indefinitely as long as the family was otherwise eligible for aid from the State relief administration.

In January 1936, this policy was amended to the effect that aid was discontinued to persons upon their refusal to return to legal residence after it had been verified.

In the fall of 1937, with the establishment of the Farm Security Administration grant program, persons lacking 1 year's residence in California and unwilling to return to their place of legal settlement, were referred to the Farm Security Administration for aid. The State relief administration thus extended only temporary aid pending verification of legal residence and return thereto. The Farm Security Administration gave more complete aid to persons lacking 1 year's residence. The Farm Security Administration adopted the policy of transferring cases to the State relief administration upon the completion of 1 year's physical residence in California.

In June 1938 the State relief administration policy became more restrictive. Nonresidents were accepted for aid only if they indicated in advance a willingness to return to legal residence when such residence was verified.

In January 1939 the latter provision was rescinded. Applicants for relief were not required to indicate willingness to return to legal residence in order to receive aid. However, efforts were made to verify legal residence and to return these persons. In March 1939 the Farm Security Administration agreed to continue aid to persons receiving aid under the Farm Security Administration grant program after completion of 1 year's residence; and not to refer them to the State relief administration.

At approximately the same time the State relief administration again decided not to extend aid to persons lacking 1 year's residence unless the family indicated at the time of application willingness to return to its place of legal residence. This policy was again adopted because of lack of adequate funds for operation of the various State relief administration programs.

In February 1940 the California Legislature, in enacting an appropriation bill for the State relief administration, included several residence provisions in the act. The new law denied relief to persons who had not resided continuously in California for a period of at least 3 years, unless such persons had, previous to February 2, 1940, already received aid from the State relief administration or Work Projects Administration. It also specified that nonresidents could be transported to their place of legal settlement with funds available from this appropriation. However, persons once returned to legal residence could not again enter California and receive aid from the State relief administration.

Under this act, the relief commission restricted aid to nonresidents to a maximum of 30 days. The attorney general has interpreted the law to mean that transportation of a nonresident may not be furnished if his legal residence is in Alaska, Hawaii, Puerto Rico, or a foreign country.

In May 1940, the California Legislature, in another appropriation bill again amended the residence requirements in the preceding relief appropriation act. The present act states that none of the appropriation may be extended for the relief of any person who "has not either lived continuously in this State for 5 years, if he began to live in the State of California after June 1, 1940, or lived continuously in the State of California for 3 years, if he began to live in the State of California on or before June 1, 1940." With respect to aid to nonresidents the following provision was adopted: "* * * the appropriation shall be available for relief pending transportation, but not to exceed 30 days, and for the costs of transportation of a nonresident to any State in which he resides. Every nonresident, who has once received assistance under this subdivision * * * shall not be granted further assistance from the appropriation made by this act."

At the present time, therefore, the State relief administration may not grant aid, other than temporary aid pending return to legal residence, to new applicants who have not resided in California for 3 years or more if they started to reside here prior to June 1, 1940. Persons entering the State after June 1, 1940, may not receive aid for 5 years after the date of entrance.

An illustration of the problems facing the State Relief Administration and County Welfare Departments of California in attempting to work out policies concerning the transient problem is contained in the following letter recently received in reply to an attempt to verify legal residence of a transient applicant for aid in San Diego County.

United Provident Association,
Oklahoma City, Okla., September 11, 1940.

Re Smith—John, Mary.

Mrs. Kathryn Cox,
Social Service Supervisor, State Relief Administration,
Box 310, San Diego, Calif.

My Dear Mrs. Cox: Please refer to your letter of August 24, 1940, regarding the above-named family.

The information which we have secured during this investigation indicates that the John and Mary Smith family have legal settlement in Oklahoma City. You may return them, at your expense, any time prior to August 1, 1941, when their settlement will terminate.

Mr. and Mrs. Smith's son, George Smith, is employed on the Work Projects Administration program. He is unable to send funds for transportation for his parents.

Please advise Mr. Smith that the facilities available for relief in Oklahoma are very inadequate. If Mr. Smith is an able-bodied man and capable of doing manual labor, he would not be eligible for assistance through the United Provident Association or the Salvation Army since these two agencies assist families where the wage earner is temporarily incapacitated. Neither of these agencies accept unemployment cases. Unemployment cases are cared for by the County Welfare Board. That agency has thousands of families on its rolls. Its case load is so large and funds so limited that each family receives a maximum of $2 or $3 a month. In addition, county welfare board cases receive United States Government food stamps redeemable in Federal surplus commodities but these are inadequate for subsistence. Mr. Smith would not be eligible for relief from the American Red Cross unless he is a veteran with a service-connected disability. The only other type of relief available in Oklahoma to able-bodied persons is the Work Projects Administration. At this time the Work Projects Administration rolls are officially closed. There are approximately twenty-eight hundred men in this county who are certified for Work Projects Administration employment, but who have never been assigned to work. Before new applications are taken and new certifications are made, this surplus must be absorbed. If Mr. Smith desires to return to Oklahoma City after being informed of the existing relief conditions in this community, you have our permission to send him here.

Very truly yours,

(Miss) Marie Dorney,
Case worker.

THE VOLUME AND COST OF AID TO NONRESIDENTS

California has had the largest share of the Federal transient population in the United States. During the Federal transient program, between 1933 and 1935, 10 to 13 percent of the national total of persons under care were aided each month in California. The peak number was 38,815 persons under care on February 15, 1935. Table I shows the number of persons cared for under the California transient program as reported to the Federal Emergency Relief Administration the middle of each month during 1934 and 1935. It will be noted that at the peak February 15, 1935, the 38,815 individuals included 23,309 persons from 6,652 families and 15,506 unattached persons.

(Table 1 eliminated.)

Following the liquidation of the Federal transient program in 1935, the number of transient cases receiving aid from the State relief administration has been relatively small as a result of the policies concerning aid to nonresidents. At the present time, therefore, the State Relief Administration is giving temporary aid to only 475 transient cases including 1,660 persons.

With the inauguration of the Farm Security Administration grant program, the major portion of nonresidents in need of assistance have been cared for under this program. At the present time, approximately 4,500 cases are being given aid under this grant program of the Farm Security Administration.

During the period July 1933 to June 1940, it is conservatively estimated that more than 300,000 persons received aid within 1 year after they had come to California. This number represents more than 32 percent of the estimated total migration to California of 957,000 persons during the years 1933 to 1939 according to estimates of the Division of Farm Population and Rural Welfare of the United States Department of Agriculture, Bureau of Agricultural Economics. To these 300,000 persons, aid has been extended from State and Federal funds approximating $13,000,000, exclusive of administrative costs. At the present time, expenditures from State funds for aid and transportation to transient cases approximate $750,000 a year.

Data concerning the size of the transient case load during each month and the amount of relief extended to these cases are presented in Table II.

(Table 2 eliminated.)

The fact that persons who have been in the State more than a year, but are still recent migrants, have had a marked effect upon the State relief administration case load, is indicated by an examination of case-load data for individual county offices of the State relief administration since 1937. * * *

In view of the fact that a large proportion of those migrating to California were last employed in agriculture, and an even higher proportion turned to agriculture in California for employment, it would be expected that in recent years the State relief administration case load in agricultural counties would have risen more rapidly than in urban counties. This is strikingly the case. The end of February may be taken as representative of the peak of the total State relief administration case load. At the end of February 1937, the total State relief administration case load consisted of 70,397 cases, while at the end of February 1940 it consisted of 112,354 cases, an increase of 60 percent. The combined case loads for the four urban counties—San Francisco, Alameda, Los Angeles, and San Diego—totaled 42,419 at the end of February 1937 and 62,901 at the end of February 1937, an increase case load for eight counties of the predominantly agricultural San Joaquin Valley—San Joaquin, Stanislaus, Fresno, Madera, Tulare, Kern, Kings—rose from 5,447 at the end of February 1937 to 20,007 at the end of February 1940, an increase of 267 percent.

The sharp disproportionate rise in the State relief administration case load in agricultural counties is also the result of another and important type of migration, intrastate migration as contrasted to interstate migration. Migration within the State, entirely apart from migration from outside of the State, is necessary to meet peak requirements for labor by several California industries, particularly agriculture. These occur at different dates in different areas. From the attached chart showing individual county case loads, it may be seen that the various counties reached their peak in case load on varying dates. Similarly the low points in case load are also staggered. The fact that relief case loads in the agricultural counties of California tend to be more transitory and less stable than in the urban counties is also indicated by comparative figures indicating average differences between peak and low case loads. For the 3 years 1937, 1938, and 1939, in the above-mentioned agricultural counties, the average low point in case load was 66 percent of the average peak, whereas in the four urban counties it was 24 percent of the average peak. Typical patterns of migration within the State of California are shown in one of the appended documents—Migratory Labor in California.

Table 3 shows by months the number of cases closed by the State relief administration through the return of transient cases to their States of legal residence for the period December 1935 through June 1940. During this period 25,213 cases, including approximately 83,200 persons, were returned to legal residence at a cost of approximately $600,000. (These figures are included in the number of cases aided and in the relief extended data presented above.)

(Table 3 eliminated.)

The above figures pertain only to relief extended to cases during their first year of residence in California. If one were to consider aid extended to recent migrants to the State after they had met the State relief administration residence requirement, the volume of relief extended would be considerably greater. For example, in February 1939, 26 percent of the State relief administration case load consisted of cases and persons who had been in California for less than 3 years. A distribution of the State relief administration case load at that time according to length of residence in California is presented in table 4.

(Table 4 eliminated.)

The fact that the present transient case load represents a small proportion of the total load of the State relief administration does not mean that the problem resulting from recent migration into California is now neligible. The State relief administration's transient case load is small because—

1. Legislation prohibits State relief administration aid to persons who do not meet the present residence requirements.
2. The Farm Security Administration is giving aid to a number of persons who have no legal residence in California.
3. Most of the persons who migrated to California during the middle of the past decade, when the largest migration occurred, now have California residence and are not classed as transients.

Additional information on the aspects of the migrant problem in California is available in other material presented with this statement to the House Committee on Interstate Migration. This material includes "Review of Activities of the State Relief Administration of California," "Migratory Labor in California," and "Transients in California"

CHARACTERISTICS OF TRANSIENT APPLICANTS FOR RELIEF, 1936

During the last quarter of 1936, the State relief administration collected information on the background and characteristics of transient persons receiving aid from the State relief administration.

Questionnaires were filled out by case workers for a sample group of applicants throughout the State. Data were tabulated from 1,961 questionnaires. A summary of the information gathered follows:

The transient applicants came largely from the West Central States and from Illinois. The table on page A shows not only the last State in which the transient applicant lived for 1 year or more but also the length of time from the date of beginning their migration to the date of application for relief in California. It will be noted that more than 15 percent of the applicants came from Oklahoma, with Texas and Missouri contributing the next largest proportions—7.5 percent. The other West Central States of Arkansas, Nebraska, and Kansas also contributed significantly. The East Central State of Illinois was the State of origin of 6 percent of the applicants. Outside of the Central States, the States of origin of other significant numbers of these transient applicants were New York, Colorado, and California's neighboring States of Arizona, Washington, Oregon, and Utah.

The table on page A[1] also indicates that most of the transients included in the survey did not leave their homes to come directly to California because 62 percent of the applicants had left their homes 3 months or more prior to the date of their applications for aid in California, and 50 percent had been traveling 4 months or more before they applied for aid in this State. One out of every eight of the applicants had been on the road for 1 year or more before the date of their application for aid from the State relief administration.

It is particularly significant to note from table 6 that 1,845, or 94 percent, of the applicants were native-born American citizens. The nationality of these recent migrants to California is presented in table 6.

(Table 6 eliminated.)

The table on pages 2886-7 shows by State of origin the industry in which the applicants had previously been employed. Of the 1,961 persons 525, or 27 percent, had an agricultural background, and 292, or 15 percent, had formerly been in domestic and personal service. The manufacturing, construction, and trade industry groups each contributed approximately 10 percent to this group of migrants entering California and seeking aid.

It may be noted that, although agriculture as a whole contributed only 27 percent to the total number of applicants, in the four West South Central States of Arkansas, Louisiana, Oklahoma, and Texas, it contributed 43 percent; and 50 percent of the persons who had come from Oklahoma had agricultural backgrounds.

The table on pages 2888-9 shows the occupational classifications of the 1,961 transients included in the survey. The previous table indicated that 525 persons had an agricultural background. Of these, 421 were reported as unskilled farm workers. In addition to these, 267 workers were reported as unskilled nonfarm workers. Therefore, a total of 688 persons or 35 percent of the number included in the survey were reported as unskilled workers. The skilled trades, the semiskilled trades, and the domestic and personal services each contributed in the nieghborhood of 13 percent. There were 149 or 7.5 percent of the applicants reported as professional and kindred workers.

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[1] This table as submitted was illegible. It was removed and placed in the committee file.

The reasons for starting migration, as stated by the 1,961 transient cases applying for relief, are shown in table 9 according to their occupational classifications. Approximately one-half left their homes seeking work in general with no specific place of settlement in mind. The fact that 50 percent of the applicants took 4 months or more before reaching California is a reflection of this fact.

(Table 9 eliminated.)

About one out of eight reported that they had left home seeking work in a definite place and about the same proportion indicated that they had started their migration because of health problems.

The figures show that approximately 5 percent indicated that they had left home because of the drought. However, this figure should be considered in relation to the two reasons immediately following, "seeking work in general" and "seeking work in a definite place," since the drought may have been the causal factor in many of the cases of these persons leaving their homes to seek work.

It will be noted that in the group of farm operators, owners, and workers. 13 percent reported that they had left home as a result of the drought, but an additional 68 percent indicated that they had left seeking work, or because the location was unhealthy. To what extent the drought entered into these latter cases is unknown.

In interpreting the above statements it should be noted that the four reasons above mentioned contributed in about the same degree in the case of nonagricultural persons as it did in the case of the farm workers.

Table 10 shows the number of times the transients applying for relief had entered California. In 1,388 of the 1,961 instances, this was the first time that these persons had come to California. This represented 70 percent of the cases. An additional 20 percent had been in California once before. The few persons who reported that they had entered California numerous times previously were, in all probability, following the crops as agricultural laborers.

(Table 10 eliminated.)

Table 11 indicates that in 1,604 of the 1,961 cases the head of the family was a man and in 357 cases the head of the family was a woman. Of the 1,604 male heads, 1,217, or approximately 75 percent, were persons who were classed as physically capable of doing a full day's work and sufficiently skilled in their occupations to be normally satisfactory to private employers. Of the 357 women heads, 201, or about 55 percent, were classed in this category of group 1 employables.

(Table 11 eliminated.)

Table 12 shows, according to sex of the head of the family, the size of the household of the cases included in the survey. It is significant to note that of all cases included in the survey, 22 percent were single men and 8 percent were single women.

(Table 12 eliminated.)

WHAT HAPPENS TO REJECTED APPLICANTS

It is necessary to be aware of the consequences of the rejection of applicants for relief for reasons other than financial ineligibility. Rejected applicants continue to be a part of the economic structure of a county or State in which they are present and therefore affect the social and economic conditions in the State.

Persons who are in need but who are denied public aid for technical reasons continue to subsist through the sale of personal belongings, through borrowing, through reducing the quantity and quality of their food, through doing without necessary clothing and shelter, and through acceptance of jobs at substandard wages which tend to reduce the general wage scale and the general standard of living.

The State relief administration is aware of many individual situations where persons continue to subsist through the above methods after having been rejected by a relief agency. A sample survey was made to determine what happened to persons rejected for technical reasons after the passage of restricted unemployment relief legislation in February 1940. In addition to changing residence requirements, the legislation denied relief to certain aliens, limited the maximum amount of aid which could be extended to a particular family, and required deductions of all outside income of all family members, in determining relief grants.

As a result of this legislation, cases which heretofore had been eligible for aid became ineligible and other applications which previously would have been accepted were rejected. The State Relief Administration surveyed 148 cases in San Diego County who were denied relief as a result of the new legislation, and 77 cases whose relief grants were reduced thereby. The 148 cases consisted of 71 cases whose applications for aid were rejected, and 77 cases which had been receiving aid but which were closed as a result of the new legislation.

Of the applicants rejected, 25 of the 71 cases had found it necessary to move, and it was impossible to secure additional information concerning them. Of the remaining 46 cases, the major adjustment forced upon the family concerned their food. Twenty families, or 43 percent, found it necessary to eliminate fresh milk from their diets, or substitute canned milk therefor, reduce, and sometimes eliminate, meat from the diets, increase the consumption of starches, etc. It should be noted that a majority of the members of these 20 families were children. Medical surveys in this area have indicated that diet changes caused by lack of sufficient funds have often resulted in the occurrence of rickets, pellagra, scurvy, secondary anemia and other diseases of malnutrition which tend to make the patient susceptible to more serious diseases such as tuberculosis.

Rent was in arrears in 35 percent of the families interviewed. In 28 percent of the cases utilities were delinquent. In 41 percent of the cases there was a need for clothing. In one out of every four cases medical care was needed. It was obvious that the refusal of relief intensified the problems of many of the cases which had applied for aid. In a few instances the applicants have continued to get along through inadequate part-time jobs at meager wages.

The cases to whom relief was discontinued as a result of the new legislation show a very similar pattern. In 6 of the 77 cases the family found it necessary to move since they were unable to meet their rent. Detailed interviews were taken in the remaining 71 cases. Twenty-eight, or 36 percent, were behind in their rent. In 3 instances utilities had been discontinued and in 16 cases the payment of utilities was already delinquent. Two-thirds of the former relief recipients needed additional clothing. The situation in relation to diet was more serious, with numerous reductions in the quantity and quality of food. Eleven of the families indicated that they were unable to manage 3 meals daily. In 9 cases special diets had previously been prescribed because of illness but the family had been unable to purchase the needed food.

A few examples will illustrate what has occurred to several of the cases surveyed. Family A consisted of a man, his wife and three minor children. Their application for aid was rejected because of lack of 3-year residence in California. At time of application the family had exhausted all means of support, having borrowed $100 on a car 2 months prior to application. Since termination of employment a month prior to application, the family lived entirely on credit, accumulating a $26 grocery bill. The rent was 1½ months in arrears and gas and light bills were delinquent. It was not possible to purchase milk and vegetables for the minor children and their diet consisted chiefly of beans and potatoes. Credit for groceries was being discontinued. At the time of the survey the family was being pressed for their back rent and had absolutely no idea as to how they would manage in the future.

Case B consisted of a man, his wife and three minor children. Their application for aid was rejected by the State relief administration because of lack of residence. After rejection, the man secured some odd jobs as a laborer, but his total earnings during approximately a month and a half were about $52. It became necessary for the eldest child, a 17-year-old daughter, to leave home because of the crowded condition and the lack of finances, and to move in with friends in El Centro. The mother of the family at the time of the interview was pregnant and expecting confinement shortly. Prenatal care had not been received. No medical arrangements had been made. The family was unable to buy the proper foods and was using canned milk entirely. All members of the family were in need of clothing. The head of the family had no prospects of employment.

Example C. The case was that of a man 52 years old, temporarily separated from his wife and child because of their financial situation and because of their ineligibility for relief on the basis of residence requirements. The family had come to California from Texas 9 months previously and had refused to return and was therefore rejected by the State relief administration. When the man lost his job, his wife and child went to live with her father, having been forced to move. The wife's father's resources were limited because of the irregularity of agricultural work and his family of six. The only work "C" had had during 2½ months was four days of labor during which he earned $12. With this he paid part of his rent, sent $6 to his family and reduced his grocery bill from $8.70 to $5.48. At the time of the interview "C" was sharing a one-room lean-to with another man and was eating one meal a day, consisting largely of potatoes, beans, and canned milk, which had been his diet for several months.

EXHIBIT 2.—*Resolutions of the California State Legislature Re Transient Problem 1933–40*

Senate Concurrent Resolution No. 5 (*Statutes, 1933, p. 2813, Chapter 9, Resolutions*):

> "WHEREAS, Indigent, nonresident, transient unemployed seek in California a haven during the winter months and burden the relief agencies and welfare facilities of the counties of the State beyond the ability of the latter properly to care for them, to the detriment of the needy and unemployed residents of our counties; and
>
> WHEREAS, There is dire need for an expansion of the California labor camp relief program to furnish relief to fifteen thousand men instead of the seven thousand at present provided for and if this is done the county relief facilities will thereby be relieved of their present burden to the extent of such increase; and
>
> WHEREAS, The available funds of the State, including moneys derived from private sources, are inadequate to care for this increase and the additional sum of $587,785 will be required; and
>
> WHEREAS, The Government of the United States through the Emergency Relief and Construction Act of 1932 has made available to the States the sum of three hundred million dollars to be used in furnishing relief and work relief to needy and distressed people and in relieving the hardship resulting from unemployment, which sum has been appropriated to be loaned to the governors of the several States upon their application and is to be repaid to the Government of the United States by making annual deductions, beginning with the fiscal year 1935, from regular apportionments made from future Federal authorizations in aid of the States for the construction of highways and rural post roads; now, therefore, be it
>
> *Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Governor is hereby requested to apply to the Reconstruction Finance Corporation under the provisions of subdivision (c) of section 1 of Title I of the Emergency Relief and Construction Act of 1932 for the sum of $587,785 to be used for an expansion of California labor camps, and be it further
>
> *Resolved*, That the Secretary of the Senate be and he is hereby directed to transmit a copy of this resolution to the Governor."

Assembly Joint Resolution No. 11 (*Statutes 1937, p. 2710; Chapter 23, Resolutions*):

> "WHEREAS, Natural interstate migrations of persons and families in search of employment are greatly extended during times of general unemployment or by reason of a calamity such as a drought, and conditions during the last five years have greatly increased the unsettled population in the United States and states with mild climates and good wages inevitably receive a disproportionate amount of such unsettled population; and
>
> WHEREAS, It is to be expected as a continuing condition that underemployed transient individuals and families will be found in disproportionate numbers in several States and that public support and care will inevitably be required from time to time for a substantial percentage of such individuals and families regardless of residence laws; and
>
> WHEREAS, During the operation of the Federal transient relief program in California this State had under care through this program 12 percent of all of the transient cases receiving aid in the United States and 16 percent of all of the families receiving aid, although the population of California was only 4.7 percent of the population of the United States; and
>
> WHEREAS, During the eighteen-month period, February 1, 1934, to August 31, 1935, the average number of transient cases receiving care in California

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NOTE: See also substantially similar resolution memorializing Federal Government for loans for relief purposes, *Senate Concurrent Resolution No. 4 (Statutes, 1933, p. 2844; Chapter 12, Resolutions)*; also similar resolution memorializing Federal Government to act re deportation of alien unemployed, *Assembly Joint Resolution No. 32 (Statute 1935, p. 2527; Chapter 55, Resolutions)*; also similar resolution memorializing Federal Government not to rescind any relief rules with the effect of increasing burdens on California counties, *Assembly Joint Resolution No. 66 (Statutes 1935, p. 2712; Chapter 143, Resolutions)*.

was 17,245 and on February 15, 1935, there were 22,158 such cases receiving relief; and

WHEREAS, During the period July 1, 1936, to November 30, 1936, automobiles entering California with families obviously seeking employment carried 55,372 individuals, 42,469 of whom were from the drought States and a considerable additional of families and individuals seeking employment entered by other means of transportation; and

WHEREAS, There has not been and is not sufficient seasonal or permanent employment for transients entering the State and there have at all times during the past calendar year, and now are, under care by the State Relief Administration and employed by the Works Progress Administration large numbers of persons for whom neither temporary nor permanent employment has been or is available; and

WHEREAS, It would be financially impossible for the State of California to continuously extend such aid as is needed for transient individuals and families in California and even though emergency aid is extended to transient families, women, girls, and boys, pending verification of legal residence, some States in verifying residence advise that no State Aid of any kind is available and that limitations of Federal security wage program quotas preclude assistance from that source; and

WHEREAS, The emergency aid now extended costs in excess of $500,000 per year and this sum covers only a minor portion of the sustenance and health needs of transient persons and families in California and extensive sickness and health problems exist to such a degree that some counties have overcrowded every available public hospital and health facility; now, therefore, be it

Resolved, by the Assembly and the Senate of the State of California, jointly, That the Legislature of State of California respectfully urges the President of the United States and the Congress to take cognizance of the problem of care of the unsettled population of the Nation as a national matter and make provision for an appropriation to be used to reimburse States for care of persons and families needing public assistance in States other than the States of their residence and making provision for the continuance of such aid to the recipient thereof after residence has been established in a State other than the State of origin."

Senate Joint Resolution No. 5 (Statutes 1938, Extra Session; page 171, Chapter 26):

WHEREAS, The problem of relief for indigent non-residents of the State of California has reached alarming proportions; and

WHEREAS, There has been introduced in Congress H. R. 9256, by Congressman Voorhis providing for aid by the Federal Government to States which can and will meet the requirements of said act: and

WHEREAS, Said bill provides for the return of unemployable indigent transients to the State of their legal settlement at Federal expense, and gives the Social Security Board power to determine the State of legal settlement; and

WHEREAS, Said bill provides for Federal reimbursement to States and counties of moneys spent for relief and medical care of nonresidents; and

WHEREAS, The provisions of said bill require that eligibility for relief thereunder is contingent upon registration for work with the United States Employment Service or an affiliated State employment service; and

WHEREAS, While no State is required to come under the terms of the bill, the provisions thereof are peculiarly applicable to the State of California because of the fact that this State, by reason of its higher relief standards, has encouraged the migration of indigents into this State; and

WHEREAS, The enactment of this bill would be of peculiar benefit to the State of California; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the President and the Congress of the United States are hereby memorialized and requested to enact said H. R. 9256; and be it further

Resolved, That the Governor transmit copies of this resolution to the President of the United States, the Vice President, the Speaker of the House of Representatives, and to the members of the delegation from California in the Congress."

Assembly Joint Resolution No. 25 (*Statutes 1939, p. 3209; Chapter 72, Resolutions*):

"Whereas, Natural interstate migrations of persons and families in search of employment are greatly extended during times of general unemployment or by reason of a calamity such as a drought, and conditions during the last five years have greatly increased the unsettled population in the United States and States with mild climates and good wages inevitably receive a disproportionate amount of such unsettled population;

Whereas, It is to be expected as a continuing condition that underemployed transient individuals and families will be found in disproportionate numbers in several States and that public support and care will inevitably be required from time to time for a substantial percentage of such individuals and families regardless of residence laws; and

Whereas, During the operation of the Federal transient relief program in California this State had under care through this program 12 percent of all of the transient cases receiving aid in the United States and 16 percent of all of the families receiving aid, although the population of California was only 4.7 percent of the population of the United States; and

Whereas, During the eighteen-month period, February 1, 1934, to August 31, 1935, the average number of transient cases receiving care in California was 17,243 and on February 15, 1935, there were 22,158 such cases receiving relief; and

Whereas, During the period July 1, 1936, to November 30, 1936, automobiles entering California with families obviously seeking employment carried 55,372 individuals, 42,469 of whom were from the drought States and a considerable additional number of families and individuals seeking employment entered by other means of transportation; and

Whereas, The number of transients entering California for the purpose of employment has increased even more rapidly since 1936; and

Whereas, There has not been and is not sufficient seasonal or permanent employment for transients entering the State and there have at all times during the past calendar year, and now are, under care by the State Relief Administration and employed by the Works Progress Administration large numbers of persons for whom neither temporary nor permanent employment has been or is available; and

Whereas, It would be financially impossible for the State of California to continuously extend such aid as is needed for transient individuals and families in California and even though emergency aid is extended to transient families, women, girls and boys, pending verification of legal residence, some States in verifying residence advise that no State aid of any kind is available and that limitations of Federal security wage program quotas preclude assistance from that source; and

Whereas, The emergency aid now extended costs in excess of $500,000 per year and this sum covers only a minor portion of the sustenance and health needs of transient persons and families in California and extensive sickness and health problems exist to such a degree that some counties have overcrowded every available public hospital and health facility; now, therefore, be it

Resolved, by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully urges the President of the United States and the Congress to take cognizance of the problem of care of the unsettled population of the Nation as a national matter and make provision for an appropriation to be used to reimburse States for care of persons and families needing public assistance in States other than the States of their residence and making provision for the continuance of such aid to the recipient thereof after residence has been established in a State other than the State of origin; and be it further

Resolved, That the chief clerk of the Assembly is directed to send a copy of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each member in Congress from California and to the Administrator of the Federal Works Progress Administration."

Senate Joint Resolution No. 14 (*Statutes 1939, p. 3246, Chapter 109, Resolutions*):

"Whereas, There is pending in the Congress of the United States a bill known as the 'Voorhis Bill,' designed to provide Federal financial aid for the care of destitute nonresidents, and to secure uniform residence requirements among the States; and

WHEREAS, Passage of this measure is of vital importance to the State of California because it receives disproportionately a heavy influx of destitute farmers; and

WHEREAS, California is financially and otherwise unable to shoulder the relief burden imposed by such influx in the absence of Federal financial aid and uniform residence requirements among the States; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of this State hereby memorializes the President and Congress of the United States to consider and enact said Voorhis Bill into law and that the members of the Senate and of the House of Representatives from California are hereby urged and requested to use all honorable means in the furtherance of the enactment of such legislation; and be it further

Resolved, That copies of this resolution be forthwith transmitted to the President of the United States, the President of the Senate, the Speaker of the House of Representatives and the members of the House and Senate from the State of California."

Senate Joint Resolution No. 3, Statutes 1940, Extraordinary Session; Chapter 13, Resolutions):

WHEREAS, In view of the fact that we live in a Christian Nation and a civilized community, it is incumbent on the citizens of California to be concerned for the welfare of their neighbors who find themselves in the humble position of requiring aid to meet the necessities of life; and

WHEREAS, To add to our responsibilities for the care of poor persons have come many thousands of immigrants to California from the cold of the North, the drouth and dust bowl areas of the Middle West, and the flooded areas of the South; and

WHEREAS, The taxpayers of the State of California have been called upon to aid and assist in assimilating this influx of unfortunate American citizens who have migrated to our State in desperation and are in dire need; and

WHEREAS, The taxpayers of the State of California have uncomplainingly up to the present time taken care of this situation as best they know how and to the limit of their ability, at a cost of many millions of dollars annually; and

WHEREAS, The State of California paid to the Federal Government between the years of 1933 and 1938 inclusive, more than $1,131,000,000 in taxes; and

WHEREAS, The State of California received from the Federal Government from all sources in return $952,000,000—California having paid nearly two hundred million dollars more in taxes than it received from the Federal Government during that period; and

WHEREAS, During that same period Oregon paid to the Federal Government approximately $50,000,000 in taxes and received more than $228,000,000 in return from the Federal Government—receiving over 4½ times what it paid in; and

WHEREAS, Nevada paid approximately $15,000,000 to the Federal Government during that same period and received in excess of $98,000,000 in return, or in excess of 6½ times its payment to the Federal Government, and neither of these States received an appreciable amount of immigrants nor are they carrying the local load that California is carrying, on account of the large number of persons receiving Old Age Assistance in our State; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the President of the United States, the Congress of the United States, the Federal Security Administrator and the Commissioner of the Work Projects Administration are hereby respectfully urged and implored to come to the aid of California and give immediate attention and favorable action to our just cause at this crucial moment when it is necessary to call an extraordinary session of the Legislature to appropriate additional funds for relief; and be it further

Resolved, That the Governor of the State of California is hereby requested to transmit copies of this resolution to the President of the United States, the Congress of the United States, the Federal Security Administrator and the Commissioner of the Work Projects Administration; and be it

Resolved, That the Governor of the State of California and the State Relief Administrator are requested immediately to take steps to prosecute this resolution to a successful conclusion.

Exhibit 3.—*Section 2615, Welfare and Institutions Code, as Related to Other Provisions of the Welfare and Institutions Code of Which It Is a Part*

The Welfare and Institutions Code, Statutes 1937, Chapter 369, "An Act to establish a Welfare and Institutions Code, thereby consolidating and revising the law relating to and providing for protection, care, and assistance to children, aged persons, and others specially in need thereof, and to repeal certain acts and parts of acts specified herein, declaring the urgency thereof, and providing that this act shall take effect immediately", merely assembled in code form a number of existing general laws on the subjects of welfare and institutions.

The code consists of seven main divisions,

I. Administration of Welfare and Institutions; dealing with the organization of the State Department of Social Welfare, the State Department of Institutions, and with local or county administration of welfare work;

II. Children; dealing with delinquents and wards of the juvenile courts, orphans and other needy children, and institutions for child care and home finding agencies;

III. Aged Persons; dealing with the old age security law, and institutions and boarding homes for aged persons;

IV. Indigent Persons; dealing with county institutions for the indigent and county aid and relief to indigents;

V. Physically Handicapped Persons; dealing with aid to and institutions for the needy blind;

VI. Mentally Irresponsible Persons; dealing with commitments to county and private institutions;

VII. Indians; dealing with administration of federal funds and suits in behalf of Indians.

The provisions of the Welfare and Institutions Code applicable to indigent persons are sections 200–221 of Division I and sections 2400 to 2615 of Division IV.

The only sections in Division I, Chapter 3, Local Administration, which are in any way pertinent to section 2615 are the following:

> Sec. 200: "Under such limitations and restrictions as are prescribed by law, and in addition to jurisdiction and powers otherwise conferred, the boards of supervisors in each county may provide for the care and maintenance of the indigent sick or dependent poor of the county, and for that purpose may levy the necessary property or poll taxes, or both."
>
> Sec. 206: "The board may provide for transporting the needy sick to and from hospitals to which they may be sent by authority of the board, and may provide for transporting indigents to other counties or States when such indigents will thereby cease to become public charges, or when friends or relatives of such indigents agree to assume the cost and expense of the care and maintenance of such indigents, or when such indigents are legally public charges in the places to which they are so transported."

The sections in Division IV, Indigent Persons, which are in any way pertinent to section 2615 are the following:

> Sec. 2500: "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, or by their own means, or by State hospitals or other State or private institutions."
>
> Sec. 2501: "Every county may give such emergency relief to dependent nonresidents as the respective boards of supervisors deem necessary."
>
> Sec. 2502: "If no other funds are available for the purpose, a county may incur all necessary expenses in transporting a nonresident indigent to another State or county when information at hand reasonably tends to show that the person has a legal residence in such State or county."
>
> Sec. 2503: "Whenever the respective boards of supervisors deem it best for the welfare of a family or in the public interest that an indigent remain in a county not responsible for his support, the county responsible for the support of the indigent may agree to support him in the county not so responsible; but no indigent supported in this manner shall be deemed to have acquired a residence in the nonresponsible county. Such agreement shall be made by the responsible county with the nonresponsible county, and a record or copy thereof shall be sent to and filed in the office of the State Department of Social Welfare."
>
> Sec. 2504: "If a dispute occurs between counties as to the responsibility for an indigent, either county may submit the dispute to the State Department of Social Welfare. The decision of the department thereon shall be final."

Sec. 2505: "Work may be required of an indigent, who is not incapacitated by reason of age, disease, or accident, as a condition of relief. Such work shall be created for the purpose of keeping the indigent from idleness and assisting in his rehabilitation and the preservation of his self-respect."

Sec. 2550: "Except as otherwise provided in this chapter, a person, in order to be entitled to aid, shall be a resident of the State and of the county wherein application is made."

Sec. 2551: "The provisions of this article relating to residence are applicable in determining residence for the purposes of this chapter only

Sec. 2552: "The residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose."

Sec. 2553: "The residence of an unmarried minor child is the residence of the father, while he has legal custody of the minor, or if he has not such legal custody, the residence of the mother while she remains unmarried and has the legal custody of the minor.

The residence of an orphan is that of the last deceased person who had his legal custody.

The residence of a dependent child who has been declared free from the custody and control of his parent or parents, by order of the juvenile court, is not changed by change of the residence of the parent or parents."

Sec. 2554: "Neither the domicile nor residence of the husband shall be deemed to be the domicile or residence of the wife if they are living separate and apart and in such case each may have a separate domicile or residence dependent upon proof of the fact and not upon legal presumptions."

Sec. 2555: "A resident of the State of California is a person who comes within all the following descriptions:

(a) Who has lived continuously in the State for a period of three years with the intent to make it his home.

(b) Who, during the three-year period aforementioned, has not received any public or private relief or support from friends, charitable organizations, or relatives other than legally responsible relatives; but time spent in a public institution or on parole therefrom shall not be counted in determining the matter of residence in this or another State.

(c) Who has not lost his residence by remaining away from this State for an uninterrupted period of one year. Absence from the State for labor or other special or temporary purpose does not occasion loss of residence."

Sec. 2556: "A person who is a resident of California within the meaning of this chapter is a lawful resident of the county wherein he applies for aid if he has resided therein continuously for one year immediately preceding his application for assistance. If the applicant has no such residence, the county wherein he last resided continuously for one year immediately preceding his application shall be responsible for his support. If the applicant has no such year's residence within three years preceding application, that county shall be responsible for his support wherein he was present for the longest time during the three-year period. Time spent in a public institution or on parole therefrom or in a private charitable institution shall not in any case be counted in determining the matter of county residence."

Sec. 2576: "If any indigent has living within this State a spouse, parent, or adult child, and such kindred or any of them, or any group of them has sufficient financial ability to support the indigent, he shall not be eligible for aid under this chapter, except such emergency aid as may be extended hereunder pending a determination of responsibility for his support. Upon failure of such kindred to support the indigent, the county may extend aid, and such kindred in the order above named and to the extent of their ability shall reimburse the county for the support of the indigent by paying to the county the sums per month or per day fixed by the board of supervisors for such aid. In any case where such kindred are unable to pay the entire charge for such support, they shall reimburse the county to such an extent as may be determined under the provisions of this section.

The board of supervisors shall, in the case of aid granted by institutional care, fix a reasonable charge therefor, which shall be the measure of reimbursement to the county, and the existence of the order fixing the charge shall constitute prima facie evidence of its reasonableness."

Sec. 2577: "Upon failure of the kindred, referred to in section 2576, to perform their duty to support the indigent, the board of supervisors shall request the district attorney of the county to proceed against such kindred in the order of their responsibility for support. Upon such request the district attorney shall promptly commence and prosecute proceedings for the ascertainment and enforcement of the liability and responsibility of the kindred."

Sec. 2600: "The board of supervisors of any county may establish its own policies with reference to the amount of property, if any, a person shall be permitted to have while receiving public assistance, to the end that so far as it is possible an applicant for public relief shall be required to apply his own property to his support."

Sec. 2601: "As a condition to the grant or continuation of aid to an indigent the board of supervisors may require as security for the moneys so expended that the applicant transfer or grant to it such property or interest in property as the applicant has, or such portion thereof or estate therein or lien thereon as the board specifies. Such property shall be managed by the board of supervisors and the net income thereof shall be applied to the reimbursement of the county for the aid granted and any surplus in excess of such reimbursement shall be paid to the indigent. In the case of any estate, interest, or lien in such property held by the board, or any right of management transferred thereto, the board shall have all the powers of an attorney in fact for the indigent as to such estate, interest, or lien and may sell, lease, or transfer the same, defend and prosecute all suits concerning it, pay all just claims against it and be reimbursed out of the proceeds, and do all things necessary for the protection, preservation, and management thereof. Any such estate, interest, or lien shall be held by the board subject to the claim of the county for reimbursement for aid granted to the applicant or for moneys expended in its management, preservation, or protection, and such reimbursement shall constitute a preferred claim against such estate, interest or lien."

EXHIBIT 4.—*Legislative history of Section 2615, Welfare and Institutions Code*

Present Section 2615, Welfare and Institutions Code of California (Stats. 1937, p. 1406), reads:

> "Wilful act a misdemeanor. Every person, firm, or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor."

The section, however, was not a new statute in 1937 but was based upon a similar statute in effect prior to the adoption of the Welfare and Institutions Code and which was repealed at the time of the codification of the welfare and institution laws.

It should be noted that section 2 of the Welfare and Institutions Code itself provides that, in so far as its provisions are substantially the same as existing statutory provisions relating to the same subject matter, they shall be construed as restatements and continuations thereof, and not as new enactments.

This former statute was "An Act to provide for the aid and relief of indigents" (Stats. 1933, Chapter 761, p. 2005).

Section 12 of this act was identical in terms with present section 2615, Welfare and Institutions Code, except that following the words, "indigent person", were the words "as described in this act".

The Act of 1933, itself, described indigents in section 1 thereof (the predecessor of present sections 2500 and 2505, Welfare and Institutions Code) as follows:

> "Every county and every city and county shall aid and relieve all able bodied indigent persons and those indigents incapacitated by age, disease or accident, when such indigent persons are not supported and relieved by their relatives, or friends or by public or private institutions. Work may be required of an able bodied indigent as a condition of relief. Such work shall be created for the purpose of keeping the indigent from idleness and assisting in his rehabilitation and the preservation of his self respect."

The residence provisions of this Act of 1933 were the same as the present Welfare and Institutions Code sections 2555 and 2556, i. e., three years in the State and one year in the county.

Section 12 of the Act of 1933 was in turn based upon a somewhat similar statute, "An Act to provide for the maintenance and support, in certain cases, of indigent, incompetent, and incapacitated persons (other than persons adjudged insane and confined within the state hospitals), becoming a public charge upon the counties or cities and counties within the State of California, and for the payment thereof into a fund for the maintenance and support of such persons" (Stats. 1901, p. 636, Chap. CCX), section 3 of which read:

> "Every person, firm, or corporation, or the officers, agents, servants or employees of any person, firm or corporation, bringing into or leaving within, or procuring the bringing into or leaving within, or aiding in the bringing into or the leaving within, of any pauper or poor or indigent or incapacitated or incompetent person as hereinbefore mentioned, in any county or city and county in the State of California, wherein such person is not lawfully settled or not lawfully residing, as herein defined, knowing him to be such pauper, poor, indigent, or incapacitated or incompetent person, shall be guilty of a misdemeanor."

The Act of 1901 described indigents in section 1 thereof as follows:

> "Every county and every city and county shall relieve and support all pauper, incompetent, poor, indigent persons and those incapacitated by age, disease or accident, lawfully resident therein, when such persons are not supported and relieved by otheir relatives or friends, or by their own means, or by state hospitals or other state or private institutions."

The Act of 1901 contained no time provision for the establishment of residence in the State as a condition to relief, but did contain a provision for removal of such persons as had not resided in the county for three months, section 4 reading as follows:

> "If any person shall become chargeable as a pauper, or poor, or indigent, or incapacitated, or incompetent person as herein designated, in any county, or city and county, who did not reside therein (as herein specified) at the commencement of three months immediately preceding his becoming so chargeable, but did at that time reside (as herein specified) in some other county, or city and county in this state, it shall be the duty of the county clerk of said first mentioned county or city and county to send written notice by mail or otherwise to the county clerk of the county or city and county in which such person so resided, requesting the proper authorities of such county or city and county to remove such person forthwith, and to pay the expenses accruing or to accrue, in taking care of such person; and such county or city and county, wherein such person resided at the commencement of the three months immediately preceding such person's becoming chargeable as a poor, indigent, or incapacitated, or incompetent person as herein designated, shall pay to the county or city and county so taking care of such person all reasonable charges for the same, and such amount may be recovered by suit in any court of competent jurisdiction by such county or city and county."

In 1927, however, this Act of 1901 was amended to provide as a condition to relief that a person must have resided in the State for one year (Stats. 1927, p. 430), and in the year 1931 was further amended to provide as a condition to relief that a person must have resided in the State for three years and in the county for one year (Stats. 1931, p. 145).

An early statute (Stats. 1860, p. 213), "An Act to authorize the Establishment of County Infirmaries for the Relief of the Indigent * * *", an act which dealt with blind, lame, old, sick, impotent, or decrepit persons, or persons in any way disabled or enfeebled, so as to be unable by their own work to maintain themselves, contained provisions similar to present section 2615, as follows:

> "Sec. 17. If any person shall transport, remove, or bring, or cause to be transported, removed, or brought, any poor or indigent person from any city or county in this State, to any other city or county in this State, without lawful authority, and there leave such poor or indigent person, with intent to make such city or county chargeable with the support of such pauper, each and every person so offending, shall forfeit and pay the sum of one hundred dollars, for each and every such offense, for the use of the indigent of the city or county in which such pauper shall be left, to be recovered by action of debt, in the name of the State of California, before any court of competent jurisdiction."
>
> "Sec. 18. If any person shall willfully and without lawful authority, bring or cause to be brought into this State, any poor or indigent person or lunatic, without a protector, from any place without this State, and there leave, or attempt to leave such person, with intent to make the city or county, or city

and county in which such person shall be left or attempted to be left, chargeable with the support or maintenance of such person, each and every person so offending, shall forfeit and pay not less than one hundred nor more than six hundred dollars, for every such person left or attempted to be left, to be recovered in the name of the State of California, in the action of debt, before any court of competent jurisdiction, for the use of the city or county wherein such poor or indigent person or lunatic shall be left or attempted to be left, as aforesaid; and any person or persons, guilty of either of the offenses specified in this section, shall be obliged to convey such poor or indigent person or lunatic person, out of this State, or shall give bond to the State of California, with security, to be approved of by the Treasurer of such city or county, for the maintenance of such poor or indigent person or lunatic; *provided*, however, that in every county, wherein the poor are supported in a county infirmary, the penalties which may be collected under this act, shall be appropriated for the benefit of such county infirmary."

This act was not expressly repealed until the adoption of the Welfare and Institutions Code in 1937.

Exhibit 5.—*Policies established by the counties of the State of California with reference to eligibility for public assistance and with reference to the amount of property a person is permitted to have while receiving public assistance*

In the Welfare and Institutions Code of the State of California it is provided:

"*Section 2500:*

Every county and every city and county shall relieve and support all incompetent, poor, indigent persons and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, or by their own means, or by State hospitals or other State or private institutions."

"*Section 2600:*

The board of supervisors of any county may establish its own policies with reference to the amount of property, if any, a person shall be permitted to have while receiving public assistance, to the end that so far as it is possible an applicant for public relief shall be required to apply his own property to his support."

In granting public assistance, the following policies have been established by the respective counties of California with respect to eligibility and ownership of property:

San Diego County (Population 289,348)

No aid shall be given to anyone capable of self-support and for whom regular work is available. No one is entitled to aid other than emergency aid who owns real or personal property valued at $300.00 or more, unless aid is approved by Board of Supervisors. (Administrative Code of the County of San Diego).

Life Insurance policies in excess of $125.00 cash surrender value must be cashed and used for living expenses before aid is given. (Manual, Department of Public Welfare).

San Bernardino County (Population 161,108)

No person is eligible for "indigent aid who owns real property, the assessed value of which is $3000. or more, or owning personal property, the market value of which exceeds $250.; nor to any person having cash or negotiable securities in excess of $50.00; cash surrender value of any insurance policy is considered as cash. Also no person is eligible for aid who owns, or is purchasing an automobile, the market value of which combined with other personal property exceeds $250. (Rules and regulations of County Welfare Department).

Tulare County (Population 107,152)

No one is eligible for assistance who owns merchantable personal property, except household furniture of a total value of less than $200. and the tools or implements of his trade, occupation or profession of a value of less than $200., or who owns real estate wherein the applicant has an equity of $10000. or over, or who has insurance policies exceeding $200. (Resolution of Board of Supervisors) of June 20, 1941. Prior to the resolution same definition was used according to letter from County Welfare Department).

Kern County (Population 135,124)

No "indigent aid" is given to a family in which there is an employable person. Applicants for assistance are expected to use any available financial resources of any member of the family for support prior to receipt of relief. Ownership of insurance by head of the family group not exceeding the face value of $500. is allowed. Relief may not be extended to anyone who possesses or whose family possesses an unencumbered automobile or truck having a value of more than $250., unless the vehicle is a necessity. Ownership of an automobile the value of less than $50.00 is permitted.

No aid is granted to any person who owns real property of an assessed value of $3000. or more; if the value is less than $3000, aid will not be granted unless the property is used as a home, and in that event if the value is more than $1000. and less than $3000. all property over $1000. valuation must be converted into resources for the care of the person.

No one is entitled to aid who possesses personal property in the form of liquid assets, or who possesses personal belongings, clothing, furniture or other assessable property of the value of over $250. (Manual of Policies, Kern County Welfare Department).

Marin County (Population 52,907)

Anyone having funds in excess of $25.00, or owning an automobile with a value in excess of $250.00, unless there is a necessity for the automobile is not eligible for "Indigent Aid". The only restriction as to real property is that applicant must execute a lien for reimbursement in favor of County. Only in exceptional cases is ownership allowed in excess of

$1000.00 for men;
500.00 for women;
1500.00 for man and wife when there are children.

Mendocino County (Population 27,864)

No one is eligible for "indigent aid" who owns personal property in excess of $500., or who possesses cash or negotiable securities the value of which is in excess of the monthly aid to be granted. All liquid personal assets must be exhausted. No person may be considered indigent and in need, the gross relief income of whose immediate family living within the home, is in excess of the monthly County indigent aid budget for such case. No person is eligible to aid if the family unit includes a member physically able to work, and who is available for work. (Rules and Regulations of County Welfare Department).

Stanislaus County (Population 74,866)

Applicant for aid may not own a home of the assessed valuation of over $2000., or who has personal property over the value of $300. If the latter is cash, person is ineligible if cash is more than $50. If real property is not used as home, owner is not eligible for aid unless property is not salable. A family may not own an automobile over the value of $250., nor may there be in the family an employable member, or an income of more than the budgetary needs based on a subsistence level which includes enough food for health, adequate housing, sanitation, minimum clothing, fuel. utilities and other essentials. Recipients are not allowed to possess any insurance. (Stanislaus County Welfare Department Manual).

San Francisco (Population 634,536)

No one is eligible for "indigent aid" who owns real property of any value not used as a home. If used as a home no aid is granted if assessed valuation is over $3000.

No one is eligible for aid who has any personal property, except that the following are not considered in estimating personal property: personal effects, furniture, trade equipment, automobile, insurance policies of a total loan value of less than $100. (Rules and Regulations of Public Welfare Department.)

Tuolumne County (Population 10,887)

As a general rule no assistance is extended to anyone possessing any money, who is steadily employed, or who has property of an assessed valuation of more than $500. (Letter from Welfare Department, Sept. 2, 1941.)

Alameda County (Population 513,011)

No one is eligible for assistance who has liquid assets that can be converted or who has cash funds more than sufficient for a normal working basis for the family. Aid is not denied because of the possession of a small amount of cash. Insurance policies must be surrendered for cash or borrowed on where recipient has large amount of equity.

Real property not used as a home must be liquidated. Ownership of real property of a reasonable value and used as a home does not render one ineligible to receive aid.

Kings County (Population 35,168)

No ordinance or resolutions by the Board of Supervisors have been passed nor are there any rules by the Supervisors setting forth eligibility to aid as an indigent person. The matter of determining eligibility for aid to needy persons or indigents has been left to the Welfare Department which accepts the common definition of indigent person given by Webster's and other dictionaries. (Letter from Welfare Department, September 2, 1941).

Lassen County (Population 14,479)

By instruction from the Board of Supervisors The Welfare Department certifies as eligible for County Indigent Aid those persons who are destitute of property and without means of comfortable subsistence; they must be needy, poor and actually in want; resources of all kinds are to be consumed insofar as possible. The term "indigent" during the last four years has meant an unemployable person who is unable to provide for his or his family's support. (Letter from Welfare Department, Aug. 23, 1941).

Sonoma County (Population 69,052)

Before a person is eligible for County aid, he must be unemployable and must have used his resources for the support of himself and his family as far as possible. (Letter from Welfare Department, Aug. 28, 1941).

Yolo County (Population 27,243)

By rules laid down by the Board of Supervisors indigents are unemployable persons, whether as the result of physical or social reasons, whose resources are not sufficient to cover their basic needs. These are defined as food, adequate clothing and shelter (including heat and utilities) at a subsistence level. Property which supplies a basic need may be owned and retained; such as a home. (Letter from Welfare Department, Sept. 3, 1941).

Trinity County (Population 3,970)

To qualify for assistance, a person must be unemployed, have little or no income, and have no relatives or other resources from which he can obtain a livelihood. (Letter from Welfare Department, Aug. 29, 1941).

Humboldt County (Population 45,812)

The general policy is to assist any and all individuals who have no available resources for the necessities of life. (Letter from Department of Public Welfare, Aug. 26, 1941).

Merced County (Population 46,988)

Assistance is given to all persons who are in need, destitute, and without other means of support. (Letter from Department of Public Welfare, Aug. 26, 1941),

Butte County (Population 42,840)

Indigent aid is given to persons found to be in need of assistance, based on the meaning given in Webster's Unabridged Dictionary, defining "indigent" as needy; poor. (Letter from Department of Public Welfare, Aug. 22, 1941).

Imperial County (Population 59,470)

Relief is limited "to actual indigents and persons physically and financially unable to care for themselves." (Quoting from letter of District Attorney, Sept. 12, 1941.)

Solano County (Population 49,118)

To determine whether a person is eligible for "Indigent Aid" the Welfare Department uses the standard food budget as set forth for State Child Aid cases by the State Department of Social Welfare. This budget sets up the minimum of food required for subsistence. In the event the applicant's income is not sufficient to supply this minimum, aid is granted so as to supply, together with the other income, the basic needs for housing, utilities, food, and clothing.

Nevada County (Population 19,283)

Each case is governed on its own merits, limited to families in which there is no employable member. (Letter from Welfare Department, Aug. 22, 1941.)

Santa Clara County (Population 174,949)

In determining indigency, the Welfare Commission determines if the applicant has sufficient resources to cover the basic needs of clothing, housing and food. The amount necessary for food is determined by the Okey-Huntington budget, which sets up certain basic food requirements for persons classified in age groups. Deficiency in resources to supply the basic requirements is provided for by the County.

In the following counties, no set ordinances have been passed nor are there any written rules or regulations setting forth eligibility to assistance, each case being treated on its individual merits.

Tehama County (Population 14,316)

(Letter from Department of Public Welfare, Sept. 13, 1941).

Yuba County (Population 17,034)

(Letter from District Attorney, Aug. 23, 1941).

Glenn County (Population 12,195)

(Letter from Welfare Department, Aug. 22, 1941).

Fresno County (Population 178,565)

(Letter from Department of Public Welfare, Aug. 26, 1941).

Riverside County (Population 105,524)

(Letter from Bureau of Welfare and Relief, Aug. 26, 1941).

Napa County (Population 111,782)

(Letter from Welfare Department, Aug. 26, 1941).

San Mateo County (Population 28,000)

(Letter from Welfare Department, Aug. 22, 1941).

Eldorado County (Population 13,229)

(Letter from Social Welfare Department, Sept. 8, 1941).

Lake County (Population 8,069)

(Letter from County Welfare Department, Aug. 22, 1941).

Sierra County (Population 3,025)

(Letter from Welfare Department, Sept. 3, 1941).

Placer County (Population 28,108)

(Letter from Welfare Department, Sept. 6, 1941).

San Luis Obispo County (Population 33,246)

(Letter from Welfare Department, Aug. 26, 1941).

Mono County (Population 2,299)

County does not require that a person be entirely destitute (Letter from Welfare Department, Aug. 22, 1941).

Shasta County (Population 28,800)

(Letter from Welfare Department, Sept. 5, 1941).

Del Norte County (Population 4,745)

(Letter from Welfare Department, Sept. 19, 1941).

EXHIBIT 6.—*Record of prosecutions in the counties of the State of California under section 2615 of the Welfare and Institutions Code, State of California*

INTRODUCTION

On May 19, 1941, the State Department of Social Welfare advised that section 2615 of the Welfare and Institutions Code has not been applied generally throughout the State, and that the Department had not taken part in any prosecutions, confining itself to settlement of disputes between counties as to the question of residence of an applicant for county assistance as an incompetent, poor, indigent person. The Department was aware of prosecutions in only three counties, namely, Kings, Tulare and Yuba (the instant case).

The counties involved were contacted with a view to obtaining all data concerning the cases, with particular reference to the persons alleged to be indigents.

What information was available is set forth herein, together with pertinent data received from the Farm Security Administration, United States Department of Agriculture, concerning the defendants or the alleged indigents.

KINGS COUNTY

People v. *Willie George*

Criminal No. 1370, In the Justice's Court of Corcoran Township, County of Tulare; G. W. Squire, Justice of the Peace; Docket 12, Page 170.

Complaint sworn to by Ora D. Strong on October 30, 1939 charged that Willie George on or about October 19, 1939 "did wilfully and unlawfully bring into the State of California certain indigent persons, to wit, Beulah George, Raymond George, Rose Ann George, Dorothy Dan George, Clara May George, James George, not at that time residents of the State of California, and knowing them to be indigent persons."

Docket entries as follows:

"Oct. 30, 1939 Complaint filed and warrant issued.
Nov. 2, 1939 Defendant in court and duly arraigned. Complaint was read to him and he was informed of all his legal rights.
Nov. 2, 1939 Defendant waived further time in which to enter a plea and entered a plea of "guilty as charged".
Nov. 2, 1939 Wherefore, it is the judgment of the Court that the defendant is guilty of the crime of misdemeanor, and that for said offense the said defendant be imprisoned in the County Jail for a term of 180 days, sentence suspended on condition that the said defendant reimburses the Welfare Department in the amount necessary to defray the expense of returning the following named persons to Missouri: Beulah George, Raymond George, Rose Ann George, Dorothy Dan George, Clara May George and James George."

The following information has been received from the office of the District Attorney and the Welfare Department of Kings County concerning this case:

The complaint was sworn to by Ora D. Strong, Tulare County Welfare Director, who was also present at the time judgment was pronounced. In fact the sentence made by the Court was that recommended by Mr. Strong. The Welfare Department of Kings County advanced to defendant Willie George the necessary funds for transportation of the alleged indigents to Missouri. The defendant took these persons back to Missouri and then returned to California, but has never reimbursed the Welfare Department for the funds so expended by it.

Beulah George, a widow, was the aunt of defendant, the remainder of the alleged indigents were her children, ranging in age from 12 years to eight months. The family resided in Missouri before coming to California, where child aid of $56.00 per month had been given, but was discontinued, due to lack of cooperation. At the time of a visit in October to Missouri by defendant, a resident of California, Beulah George persuaded defendant to take her and her children to California. They arrived in Kings County on October 19, 1939. Shortly thereafter application was made to the County Welfare Department by Beulah George for assistance, which was refused because of lack of residence. At that time Mrs. George stated to O. D. Strong, County Welfare Director, that she came to California because she heard this State granted a larger amount of aid for orphan children; that she had no means of subsistence; that she owned no property of any kind prior to leaving Missouri.

After the applicant had been rejected by the County Welfare Department, application for assistance was made by Beulah George to the Farm Security Administration, which granted assistance by providing groceries and two cash vouchers prior to her return to Missouri with her children.

YUBA COUNTY

People v. *Fred Edwards*

This is the instant case and supplementing the facts set forth in the record, we have ascertained as follows:

J. E. Barton, Special Investigator in the office of the State Controller, who signed the complaint in the above entitled action, made a report on February 13, 1940, to Mr. J. M. Roberts, Administrative Assistant to the State Controller, in which the following facts appeared:

The records of the Farm Security Administration, U. S. Department of Agriculture, reveal that the alleged indigent Frank Duncan applied for assistance on January 11, 1940, six days after arrival in the County of Yuba. The case was accepted by that agency and prenatal care was extended to Mrs. Duncan, hospitalization for the birth of a child on January 26, 1940 was granted and further medical care was extended after the birth.

Fred Edwards made the statement to J. E. Barton and Lyle Platt, State Relief Administration County Case Supervisor, that he made the trip to Texas for the express purpose of bringing Frank Duncan and his family to California, knowing that Duncan was not a resident of California, was unemployed in Texas, and would be unemployed and without adequate resources upon entering California.

Mrs. Duncan was a sister of Mrs. Edwards, wife of the defendant.

TULARE COUNTY

In this county eleven complaints were filed by A. H. Kincaid, Special Investigator to the District Attorney, whose duty it was to investigate cases wherein persons were unlawfully receiving assistance from the County Welfare Department, and who at present is employed in the same duties in the Welfare Department. In some instances prosecutions were commenced as the result of information obtained when applications for assistance by destitute people were made to the County Welfare Department. In other instances, reports were received from various persons that a family of destitute people had recently arrived, which lead to investigations. In both instances, upon ascertainment that these persons were without means of subsistence and were in need of assistance and had recently arrived in the State, the names of several members of the family were ascertained and complaints were filed under section 2615 against the person who had brought these people into the State.

The only information obtainable from either the Welfare Department or the District Attorney's office concerning the background of these prosecutions was secured from A. H. Kincaid, who signed the complaints. He had no written memoranda but was able to recall from memory various facts that were involved in a number of the prosecutions. These are set forth hereafter in connection with each case.

People v. *Fred E. Woodward*

Criminal No. 12,144, In the Justice's Court of Tulare Township, County of Tulare; Docket 36, Folio 295. Ward G. Rush, Esq., Justice of the Peace.

Complaint sworn to by A. H. Kincaid on January 24, 1940, charged that Fred E. Woodward, on or about the 3rd day of December, 1939, in violation of Sec. 2615 of the Welfare Code "did wilfully bring into the State of California certain indigent persons, to-wit: Mrs. Fred E. Woodward and four children, all of said indigent persons not being residents of the State and said defendant well knowing said persons to be indigent."

Docket entries as follows:

"1940
Jan. 24 Complaint filed.
Jan. 24 Warrant issued."
(No further action was ever taken)

A. H. Kincaid, who signed the complaint, advised that the Mrs. Fred E. Woodward and four children alleged to be indigents were the wife and four minor children of defendant.

The following information was obtained from the Farm Security Administration, U. S. Department of Agriculture, concerning defendant, as shown by its records as of September, 1941:

"*Woodward, Fred E.*

Family composition: Frederick E., head, age 46; Jannie, wife, age 38; Doris, daughter, age 13 years; Lois, daughter, age 9 years; Geneva, daughter, age 7; Freddie, son, age 3; Vida, son, age 1. The family has been known to this agency only in Tulare County and has received aid in the following months; December 1939 through May 1940; July 1940; December 1940 through May 1941. The client is a citizen and formerly lived at Mortilton, Arkansas. He left there in November 1939 and entered California the following month. Before coming to this state he had been engaged in the jewelry business."

People v. *John Cook*

Criminal No. 10,213, in the Justice's Court of Visalia Township, County of Tulare, Docket 25, Folio 33. Gareth W. Houk, Justice of the Peace.

Complaint sworn to by A. H. Kincaid, Dec. 14, 1939, charged that John Cook on or about Sept. 21, 1939, in violation of Sec. 2615 of the Welfare Code "did wilfully bring into the State of California certain indigent persons, to-wit: Mrs. Lela Benge, Lela May Benge, Rosemary Benge, J. B. Benge, William Edward Benge, Jackie Benge, and Jimmy Benge, all of said indigent persons not being residents of the State and said John Cook well knowing said persons to be indigent." The warrant fixed bail at $500.

Docket entries as follows:

"Defendant pleads guilty and waives time for judgment.

"Wherefore, It is by this Court ORDERED AND ADJUDGED that for said offense, you the said defendant be imprisoned in the County Jail for a term of six (6) months, suspended for two years on condition that the defendant return with his family to Oklahoma and take with him all the parties set forth in the within complaint, and not return for said two year period. Said defendant is to leave with said parties on or before the 21st day of December, 1939, at 12 noon.

"Done in Open Court this 16th day of December, 1939.

"Gareth W. Hauk"

The following information was received from the Farm Security Administration, U.S. Department of Agriculture, concerning Lela Benge and her six minor children as shown by its records:

"*Benge, Lela*

On September 26, 1939 the family composition was as follows: Lela, head age 29 (widow); Lela May, daughter, age 11; Rose Mary, daughter, age 10 J. B., son, age 7; William Ed, son, age 5; Jackie, son, age 2; Jimmie, son, age 1 Aid was extended from September through December, 1939, and February through May, 1940. All grants were made in Tulare County. The family are citizens and formerly lived in Miama, Oklahoma, where the client's husband had done farm work until his death in May, 1939. According to Mrs. Benge's statement, the family had received 'general relief' in Oklahoma. No work history was given for her."

Information from A. H. Kincaid, who signed the complaint, reveals that the alleged indigent, Mrs. Lela Benge, was the widowed mother of the remaining alleged indigents, all of whom were minor children. There was no family relationship between defendant and the alleged indigents.

People v. *Frank Ramos*

Criminal No. 11,904, In the Justice's Court of Tulare Township, County of Tulare; Docket 36, Folio 155.
Ward G. Rush, Esq., Justice of the Peace.

Complaint sworn to by A. H. Kincaid on November 20, 1939, charged that Frank Ramos, on or about the 8th day of May, 1939, in violation of Sec. 2615 of the Welfare Code "did wilfully bring into the State of California certain indigent persons, to-wit: Ponciano Borazo, Jim Borazo, Julia Ramos, Alice Ramos, Betty Ramos and Rudolph Ramos, all of said indigents not being residents of the State of California and said defendant well knowing said persons to be indigent. Docket entries as follows:

"1939	
Nov. 20	Complaint filed.
" 20	Warrant issued ($500 bail).
Dec. 27	Warrant returned and filed."

The following information was received in September 1941 from the Farm Security Administration, U. S. Department of Agriculture concerning Frank Ramos as shown by its records:

Ramos, Frank R.

On June 6, 1939 the family composition was as follows: Frank, head, age 38; Dolores, wife, age 38; Ponciano, son, age 15; Eufrasio, son, 13 years; Julia, daughter, 10 years; Alegandra, daughter, age 9; Betty, daughter, 5 years; Rudolph, son, 1 year. The family received aid continuously from June 1939 to the present, except for September, 1940. Mr. Ramos is a citizen of Mexico and the Visalia Office recently reported that his command of the English language is very slight, limiting his employability. This accounts for the long and continuous record of aid. The general health of the family is poor and the youngest child, Rudolph, is blind, deaf and dumb, which has been a further handicap to the client, inasmuch as he has had to remain at home to care for the others."

A. H. Kincaid, who signed the complaint, advised that the alleged indigents Ponciano Borazo and Jim Borazo were step-children of defendant and that Julia, Alice, Betty and Rudolph Ramos, the remaining alleged indigents, were children of the defendant Frank Ramos and that all of the alleged indigents were minors.

People v. *Booker Crisp*

The complaint was filed by A. H. Kincaid on January 19, 1940, in the Justice's Court of Alpaugh Township, Lemuel L. Ellis, Justice, charging Booker Crisp with violating Sec. 2615 of the Welfare Code by wilfully bringing an indigent, Clara Tell, into the State on or about the 1st day of October, 1939.

Although the complaint was filed with Justice of the Peace Lemuel L. Ellis, there were no further proceedings.

According to information received from A. H. Kincaid, who signed the complaint, defendant brought Clara Tell and her eleven minor children into Tulare County and then left her and the children. There was no family relationship between defendant and Clara Tell, the alleged indigent.

The Welfare Department of Tulare County has been granting aid to Clara Tell for six of her children under the provisions of the Welfare and Institutions Code for Aid to Needy Children since July, 1941.

The following information was received from the Farm Security Administration with respect to defendant Booker Crisp:

"*Crisp, Booker*

Family composition: Booker, head, age 25; Ethel, wife, age 30; Mary, niece, age 4. The client was known to us only in Tulare County and aid has been extended in July and August, 1941. The family has been migrating between California and Arizona following the cotton crops, since 1933. They are citizens but do not have state residence in either California or Arizona."

People v. *L. D. Jones, W. K. Jones and William Ensminger*

Criminal No. 10,197, In the Justice's Court of Visalia Township, County of Tulare, Docket 25, Folio 17.

Gareth W. Houk, Justice of the Peace.

Complaint sworn to by A. H. Kincaid on Nov. 29, 1939, charged that L. D. Jones, W. K. Jones, and William Ensminger on or about the 8th day of November, 1939, in violation of Sec. 2615 of the Welfare Code "did wilfully bring into the State of California certain indigent persons, to-wit: Andrew Atkins, Minnie Atkins, Frank Ensminger, Mary Ensminger, Leon Ensminger, Ivry Ensminger, Bobby Ensminger, and Dolores Ensminger, all of said indigent persons not being residents of this State and said defendants well knowing said persons to be indigents."

Docket entries as follows:

"Warrants returned this 30th day of November, 1939. Defendants, L. D. Jones and W. K. Jones, present in court and duly arranged. Complaint read to each of them and they are informed of their right and give their true names as L. D. Jones and W. K. Jones. Defendants, L. D. Jones and W. K. Jones plead guilty and waive time for pronouncing sentence.

"WHEREFORE, It is by this Court ORDERED AND ADJUDGED, that for said offense, you, L. D. Jones and W. K. Jones, the said defendants be imprisoned in the County Jail of said Tulare County for a period of six (6) months, suspended for two years on condition defendants immediately return to their homes in Oklahoma and also return all parties named as indigents in the complaint on file therein to their homes in Oklahoma at once and have some police officer or official in their home town advise the Court of their arrival there. Said defendants and said indigents are to remain out of the State of California for a period of two years.

Done in Open Court this 30th day of November, 1939.

"Gareth W. Houk
Justice of the Peace"

The following information was received from the Farm Security Administration U. S. Department of Agriculture concerning defendant, William Ensminger, as shown by its records as of September, 1941:

"*Ensminger, William*

On July 5, 1940 the family composition was as follows: William F., head, age 43 (divorced) Mary, daughter, 13 years; Leon, son, age 15; Iver, son, age 10; Dolores, daughter, 5 years. Aid was granted in Riverside, Tulare and Kern Counties and extended in the following months:

1939: March, April, August, October, November, December.
1940: January, February, July.
1941: January, February, August.

"The family left Tulsa, Oklahoma, in April 1939 and entered California on August 10, 1939. The client is a citizen and reported six months work out of 12 months previous to July 1940, indicating his willingness and ability to work. The family had previously been in California for a few months in 1938.

Our records do not show that Minnie Atkins received assistance from this agency. However, there is a brief mention of her in the case record for William Ensminger. According to this information, Mrs. Atkins was Mr. Ensminger's former wife. In September, 1939, Minnie Atkins, her present husband, Charles Atkins, and Mrs. Atkins' five children by her first marriage left Oklahoma to migrate to California. They got as far as Texas, where they were involved in an auto accident in which Mrs. Atkins was critically injured and confined to a hospital for two months. Charles Atkins was apprehended for some charge and returned to Oklahoma, where he was sent to the McAlester Penitentiary. When Mr. Ensminger heard of the plight of his former wife and their children, he made plans to assist them to reach California. He contacted Mrs. Atkins' brothers; Lawrence D. and William K. Jones, legal residents of California, who were taking a trip to Oklahoma. They took Mr. Ensminger as far as Texas and planned to pick up Mrs. Atkins and the two younger children on the return trip. Mr. Ensminger and the three older children hitch-hiked back to California. After the Atkins family reached California, Mr. Ensminger deserted Mrs. Atkins and the children. Mrs. Atkins was still very ill as a result of the accident and applied to the County Welfare Department for assistance. She also wanted transportation back to her legal residence in Oklahoma as soon as she was able to travel."

From the records of the Farm Security Administration the following information was obtained on two cases receiving assistance from that agency:

"*Jones, William K. Jr.*

Family composition: William K. Jr. 28 years; Wife, Myrtis, 21 years; Josalee, daughter, 2 years. They have been known to this agency in Imperial, Tulare, and Santa Clara Counties. Aid was extended in the following months:

1938—March, May, August, September, October, November.
1939—January, February, March, June, July, August, November.
1940—January, March, April, May, June, July.
1941—January, February, March.

The family stated that they had formerly lived in Hollis, Oklahoma and left there in 1936. In July 1939, Mr. Jones stated that he had worked six months out of the previous year, indicating that he was employable.

"*Jones, Lawrence Dee*

Family composition: Lawrence, 30 years; Wife, Eddie, 18 years. They have been known to this agency in Imperial, Tulare and Santa Clara Counties. Aid was extended in the following months:

1938—March, May, June, July, August, September, October, November, December.
1939—January, March, May, June, July, August, October.
1940—January, February, April, July.
1941—January, March.

The family stated that they had formerly lived in Hollis, Oklahoma and left there in 1937. They lived in California for eight months in 1938 and re-entered the state in January, 1939. In June 1939 the client reported six months agricultural work for the previous year, indicating that he was employable."

People v. *Lester Anderson and Johnnie Anderson*

Criminal No. 2802, in the Justice's Court of Orosi Township, County of Tulare. Docket 14; Folio 9. E. C. Archer, Justice of the Peace.

Complaint sworn to by A. H. Kincaid, November 15, 1939, charged that Lester Anderson and Johnnie Anderson on or about October 20, 1939, "did wilfully bring into the State of California certain indigent persons, to wit, Perly Anderson, Marie Anderson, Le Roy Anderson, Iva May Anderson, Howard Anderson and Albert Anderson, all of said indigents not being residents of the State and said defendants well knowing said persons to be indigents."

Docket entries as follows:

"Nov. 15, 1939. Said defendants, each for himself, pleaded guilty as charged and received time for judgment. . . .

"Ordered and adjudged, that for said offense, you, the said defendant Lester Anderson and Johnnie Anderson each be imprisoned in the Industrial Road Camp of said Tulare County for a term of six (6) months.

"It is Ordered, however, that sentence be suspended and defendants admitted to probation for two years only on the following terms and conditions.

"(First) That on or before the first day of December, 1939, said defendants transport or cause to be transported back to the State from which they came, the State of Oklahoma, the indigent persons named in the complaint filed herein, to wit, Perly Anderson, Marie Anderson, Le Roy Anderson, Iva May Anderson, Howard Anderson and Albert Anderson.

"(Second) That defendants herein during said term of 2 years comply with all the provisions of the Welfare Code of California and also with all other laws of this state.

"Done in Open Court this 15th day of November, 1939.

"E. C. Archer, J. P."

The alleged indigents were returned to Oklahoma according to advice from the office of the District Attorney.

No further definite information was obtained concerning either the alleged indigents or the defendants.

People v. *Lee Rankin and Myrtle Morris*

Criminal No. 2803, In the Justice's Court of Orosi Township, County of Tulare; Docket 14, Folio 8. E. C. Archer, Justice of the Peace.

Complaint sworn to by A. H. Kincaid, November 16, 1939, charged that Lee Rankin and Myrtle Morris on or about the 1st day of August, 1939, in violation of Sec. 2615 of the Welfare Code "did wilfully bring into the State of California certain indigent persons, to-wit: Dorothy Morris, Billie Morris, and Howard Morris, all of said indigents not being residents of the State and said defendants well knowing said persons to be indigents."

Docket entries as follows:

"Nov. 17, 1939. Each of said defendants pleaded not guilty and waived their statutory rights as to trial within 30 days, and released on their own recognizance, pending further action herein.

"On motion of complaint herein date of trial continued indefinitely with understanding case may be set for trial on motion of Complainant or District Attorney."

A. H. Kincaid, who signed the complaint, has advised that the alleged indigents were all minor children of defendant Myrtle Morris and that there was no family relationship between defendant Lee Rankin and defendant Myrtle Morris or between defendant Lee Rankin and the alleged indigents.

The defendant Myrtle Morris, on behalf of her children, has been receiving assistance from the Tulare County Welfare Department since January, 1941 pursuant to the provisions of the Welfare and Institutions Code for Aid to Needy Children.

The following information has been received from the Farm Security Administration concerning Lee Rankin as shown by its record.

"*Rankin, Lee*

Family composition: Lee, 34 years, wife, Pearl, 30 years; Randall, son, 10 years; James, son, 7 years; John William, son, 3 years; Lee, son, 15 months. They have been known to this agency in Kern and Tulare Counties and aid has been extended in the following months:

1938—September and December.
1939—August, October, November and December.
1940—January, February, March, May.
1941—January.

The family stated that they had formerly lived in Rogers County, Oklahoma, leaving there in July 1939 and entering California the following month. Previously they had been in California for three months in 1938."

Other information pertinent to the case is as follows:

According to the Farm Security Administration, U. S. Department of Agriculture, a family composed as follows: Myrtle Morris, 33 years; Dorothy, a daughter, 14 years; Billie, a daughter, 9 years; and Howard, a son, 7 years; arrived in California on August 1, 1939 and received aid continuously from that Administration from August, 1939, through August, 1940. The family lived in Texas up to March, 1939, and in Oklahoma between March and August.

People v. *Buddy Duncan*

Criminal No. 11,983, In the Justice's Court of Tulare Township, County of Tulare; Docket 36, Folio 234. Ward G. Rush, Esq., Justice of the Peace.

"Complaint sworn to by A. H. Kincaid on Dec. 19, 1939, charged that Buddy Duncan, on or about April 29, 1939, in violation of Sec. 2615 of the Welfare Code "did wilfully bring into the State of California certain indigent persons, to-wit: Lydia Duncan, Inez Duncan, Billie Duncan, Wanda Duncan and Joe Wayne Duncan all of said indigent persons not being residents of the State and said defendant well knowing said persons to be indigent."

Docket entries as follows:

"1939
Dec. 19 Complaint filed.
" 19 Warrant issued; Bail $1000.
" 20 Deft. in court—duly arrainged—informed of all his legal rights—plead 'guilty' remanded to the custody of the Sheriff.
" 23 Deft. released on his own recognizance to appear in Court Wednesday, December 27th, 1939.
" 27 Deft. in Court to receive sentence, whereupon the Court pronounced judgment as follows:

It is hereby ordered and adjudged that you the said defendant serve six months in the County jail of Tulare County, said sentence being suspended for a period of one year, upon condition that you return to the place from whence they came, Lydia Duncan, Inez Duncan, Billie Duncan, Wanda Duncan and Joe Wayne Duncan or to the State of Arizona."

No information is available from Tulare County authorities concerning the defendant or the alleged indigents.

However, the Farm Security Administration has furnished information on a case receiving assistance from that agency in which the names of the alleged indigents appear, and which is as follows:

"*Duncan, Lanny*

Family composition: Lanny, 46 years; Wife, Lyda, 40 years; Riley, son, 21 years; Billy, 19 years; Doris, daughter, 13 years; Jo Wayne, son, 4 years. They have been known to this agency in Imperial, Santa Clara, San Joaquin, and Tulare Counties and aid has been extended in the following months:

1938—February, May, June.
1939—June, August, September, October, November, December.
1940—January through September and November and December.

The family stated that they had formerly lived in Pontotoc, Oklahoma, leaving there in February 1938. In October 1939 the two oldest boys reported six months work and the father, Lanny, reported two months work in the previous year."

People v. *Ray Kelly*

Criminal No. 11,984, In the Justice's Court of Tulare Township, Couty of Tulare; Docket 36, Folio 235. Ward G. Rush, Esq., Justice of the Peace.

Complaint sworn to by A. H. Kincaid on Dec. 19, 1939 charged that Roy Kelly, on or about Dec. 28, 1939, in violation of Sec. 2615 of the Welfare Code "did wilfully bring into the State of California certain indigent persons, to-wit: Lannie Duncan, all of said indigent persons not being residents of the State of California and said defendant well knowing said persons to be indigent."

Docket entries as follows:

1939
"Dec. 19 Complaint filed.
" 19 Warrant issued; Bail $1,000.
" 27 Warrant returned and filed."

(Warrant was never served)

No information is available from Tulare County authorities concerning the alleged indigent or the defendant.

The Farm Security Administration has submitted a report on a case receiving assistance from that agency in which the name of the alleged indigent Lannie Duncan appears. This report is as follows:

"*Duncan, Lanny*

Family composition: Lanny, 46 years; wife, Lyda, 40 years; Riley, son, 21 years; Billy, 19 years; Doris, daughter, 13 years; Jo Wayne, son, 4 years. They have been known to this agency in Imperial, Santa Clara, San Joaquin, and Tulare Counties and aid has been extended in the following months:

1938—February, May, June.
1939—June, August, September, October, November, December.
1940—January through September and November and December.

The family stated that they had formerly lived in Pontotoc, Oklahoma, leaving there in February, 1938. In October 1939 the two oldest boys reported six months work and the father, Lanny, reported two months work in the previous year."

People v. *John Vaughn and Rose Henson*

Criminal No. 1152, In the Justice's Court of Tipton Township, County of Tulare; Docket 4, Folio 300.

F. J. Klindera, Justice of the Peace.

Complaint sworn to by A. H. Kincaid on November 10th, 1939, charged that John Vaughn and Rose Henson on or about September 27, 1939, "did wilfully bring into the State of California certain indigent persons, to-wit: Robert Lee Henson, Pearline Henson, Percy Henson, Fred Henson, Mrs. John Vaughn, and said defendant John Vaughn's two children, all of said indigent persons not being residents of this State and said defendant knowing said persons to be indigents."

Docket entries as follows:

"Nov. 10, 1939. Complaint filed warrant issued. Defendants J. Vaughn and Rose Henson, brought into court by A. H. Kincaid, informed of their rights waived time of pronouncing judgment and plead guilty; judgment of this Court that defendant Vaughn serve 6 months in Tulare Co. Industrial Camp reimburse the County for all relief received. Defendant Rose Henson to serve 6 months in Co. Jail Camp and jail sentence suspended on condition the defendants leave county and State on or before Nov. 15 and they are not to return to Tulare Co. or State of Calif. for period of two years and advise this Court on their arrival in State of Oklahoma."

We have been advised by A. H. Kincaid that the defendant Rose Henson was the mother of the alleged indigents Robert Lee Henson, Pearline Henson, Percy Henson, and Fred Henson, and that defendant John Vaughn was the husband of Mrs. John Vaughn, one of the alleged indigents, and that the two children of John Vaughn, alleged to be indigents, were minors. There was no family relationship between John Vaughn and Rose Henson.

At the time of the arrest of John Vaughn he had recently completed his fourth trip between California and Oklahoma in a period of from three to four weeks and had brought people into the State with him on each trip who were destitute and without means of subsistence.

The following information was received from the Farm Security Administration as shown by its records as of September, 1941:

"*Henson, Rosie M.*

On September 16, 1940 the family composition was as follows:

Rosie M. head, 41 years; Percy, son, 19 years; Perline, daughter, 17 years; Robert Lee, son, 8 years. According to a recent report, the son Percy has left the home. The family has been known to this agency only in Tulare County, and aid was extended in the following months:

1940: September, December;
1941: January, February, March, April, May, August.

According to the client's statement, they are citizens and left Muldrow, Oklahoma, on May 16, 1940, entering California on May 19, 1940. They have resided here since that time and there is nothing in our records that would indicate that they are not law-abiding citizens. On April 15, 1941 Rosie Henson reported over 90 days farm work in the past year, indicating that she is willng to work and employable. The family had previously lived in California for a few weeks in 1939. They received aid in October, 1939 for one month in Tulare County, the son, Fred Henson, age 22, acting as case head. At that time he reported three months agricultural work in the previous year."

People v. *Richard Ochoa*

Criminal No. 11,905. In the Justice's Court of Tulare Township, County of Tulare; Docket 36, Folio 156.

Ward G. Rush, Esq., Justice of the Peace.

Complaint sworn to by A. H. Kincaid, November 20, 1939, charged that on or about May 8, 1939, in violation of Sec. 2615 of the Welfare Code, Richard Ochoa "did wilfully bring into the State of California certain indigent persons, to-wit: Ponciano Borazo, Jim Borazo, Julia Ramos, Alice Ramos, Betty Ramos and Rudolph Ramos, all of said indigents not being residents of the State of California and said defendant well knowing said persons to be indigents."

Docket entries as follows:

"Date
1939
Nov. 20 Complaint filed
" 20 Warrant issued
Dec. 27 The above named deft. appearing in Court on this day, and being informed of all his legal rights waived all legal rights and plead guilty. Waived time for pronouncing Judgt., whereupon, the Court pronounces Judgment as follows:

It is the Judgment of the sentence of the Court that you, the said Deft., serve six months in the Co. Jail of Tulare County. Committment to be withheld for a period of one year upon the following terms and conditions: The first condition is, that you gather up all these people whom you brought to this State from the State of Arizona, and take them back to the place from whence they came, and this must be done within the next ten days.

Warrant filed.

Done in Open Court this 27th day of Dec. 1939.

(Signed) WARD G. RUSH,
Justice of the Peace, said Township."

March 13, 1940

Defendant being present in Court, represented by his Attorney, R. W. Henderson, and upon being questioned by the Court, said defendant admitted in Open Court that he had not complied with the Order of Court heretofore made, on December 27th, 1939, in that said defendant had failed, neglected, and refused to return certain indigents to the place from whence they come, and which said defendant had brought to California from the State of Arizona; and good cause appearing therefor, the Order of Court heretofore made suspending the issuance of Commitment is hereby revoked and set aside, and it further appearing to the Court that Committment should issue in the above entitled cause,

NOW, THEREFORE, it is hereby ORDERED AND ADJUDGED that Commitment issue in accordance with the judgment heretofore entered on December 27th, 1939.

Done in Open Court this 13th day of March, 1940.

(Signed) WARD G. RUSH,
Justice of the Peace, said Township.

March 13
Committment issued."

Defendant was committed on March 13, 1940. A Petition for Writ of Habeas Corpus was filed in the Superior Court of the State of California and a Writ was issued on March 26, 1940. The Petition was submitted on briefs and later denied on May 3, 1940.

Immediately thereafter a Petition for Writ of Habeas Corpus was filed in the District Court of Appeal (Fourth Appellate District), State of California. The Writ was issued but defendant was released on parole before the Sheriff of Tulare County could be served, and the Petition was not acted upon further.

A. H. Kincaid, the signer of the complaint, has advised that the alleged indigents Ponciano Borazo and Jim Borazo were stepbrothers of the wife of the defendant Richard Ochoa, and that the remaining alleged indigents Julia Ramos, Betty Ramos and Rudolph Ramos were the brother and sisters of defendant's wife. All of the alleged indigents were minor children.

The following information was received from the Farm Security Administration concerning defendant:

"*Ochoa, Richard (Ricardo)*

Family composition: Ricardo, 21 years; Wife, Bessie, 20 years; Lola, daughter, 2 years. They have been known to this agency only in Tulare County and aid was extended in the following months:

1939—June, July, December
1940—January, February, March, August.

The family had previously lived in Gilbert, Arizona and left in May 1939, entering California the same month. On June 6, 1939 Mr. Ochoa reported three months agricultural work in the previous year and was seeking agricultural work at that time, indicating that he was employable. In December 1939

Mr. Ochoa was sentenced to six months in the Tulare County Jail for transporting the indigent family of Frank Ramos into California. Sentence was suspended on condition that he return the Ramos family to Arizona. Later, when it was found that the Ramos family was still living in California, Mr. Ochoa was required to serve his sentence."

EXHIBIT 7.—*Summary of Public Assistance*

Persons Receiving Aid and Amount of Aid Extended Through State and County Public Assistance Agencies in California from July 1, 1932 to June 30, 1940

Number of persons assisted and amounts expended by the State and counties in Payment of Old Age Security (aid to the needy aged) from July 1, 1933 to June 30, 1940, pursuant to sections 2000 to 2360 Welfare and Institutions Code

	Number of Persons	Total Amount of Aid	Average Per Person During Last Month of Period
July 1932 to June 1933	[1] 30,555	$1,811,819.23	------------
July 1933 to June 1934	[1] 37,967	2,068,999.27	$20.00
July 1934 to June 1935	[1] 46,419	2,480,487.06	------------
July 1935 to June 1936	[1] [2] 31,447	[2] 1,651,628.76	20.14
July 1936 to June 1937	[3] 79,113	23,730,593.00	31.35
June 1937 to July 1938	[3] 118,034	38,758,845.00	32.33
July 1938 to June 1939	[3] 131,968	49,011,577.00	32.45
July 1939 to June 1940	[3] 141,792	57,685,814.00	37.95

[1] Total number during period.
[2] Incomplete.
[3] Number of persons assisted during last month of period.

Source: Biennial Reports, Department of Social Welfare, State of California; July 1, 1936–June 30, 1938; June 30, 1940.

Since July, 1936, pursuant to the Social Security Act the Federal Government reimburses the State to the extent of one-half of the aid granted, not to exceed $15.00 per individual; the State and the county of residence each contribute one-half of the balance of the grant to each person.

Number of children assisted and amounts expended in aid to orphans and other needy children in counties and institutions from July 1, 1932 to June 30, 1940, pursuant to sections 1500 to 1630 Welfare and Institutions Code

	Number of Persons	Total Amount of Aid
July 1932 to June 1933	[1] 38,565	$2,043,261.52
July 1933 to June 1934	[1] 45,674	2,296,053.61
July 1934 to June 1935	[1] 50,220	2,541,488.82
July 1935 to June 1936	[1] [2] 48,715	[2] 2,510,412.16
July 1936 to July 1937	[3] 23,071	4,017,977.00
July 1937 to June 1938	[3] 30,896	5,533,344.00
July 1938 to June 1939	38,679	7,344,452.00
July 1939 to June 1940	42,359	8,760,467.00

[1] Total number during period.
[2] Incomplete.
[3] Number of persons assisted during last month of period.

Source: Biennial Reports, Department of Social Welfare, State of California; July 1, 1936–June 30, 1938; July 1, 1938–June 30, 1940.

Since July 1, 1936 pursuant to the Social Security Act, the Federal Government has reimbursed the State and counties for part of the aid granted as shown above. Prior to January 1, 1940 this reimbursement was to the extent of one-third of the amount of assistance up to $18 for one child and to one-third up to $12 for each additional child. Since that date Federal contribution is one-half of the grant as qualified above.

Number of persons assisted and amounts expended by the State and counties in payment of aid to the needy blind from July 1, 1932 to June 30, 1940, pursuant to Sections 3000 to 3091, Welfare and Institutions Code

	Number of persons	Total amount of aid	Average per person during last month of period
July 1932 to June 1933	[1] 4,737	$455,367.94	----------
July 1933 to June 1934	[1] 6,070	545,546.17	$33.08
July 1934 to June 1935	[1] 7,412	661,526.00	33.78
July 1935 to June 1936	[1] [2] 5,849	[2] 537,201.66	35.21
July 1936 to July 1937	[3] 4,761	1,908,344.00	35.82
July 1937 to June 1938	[3] 5,682	2.900,792.00	47.86
July 1938 to June 1939	[3] 6,479	3,531,142.00	48.03
July 1939 to June 1940	[3] 7,161	3,968,034.00	48.02

[1] Total number during period.

[2] Incomplete.

[3] Number of persons assisted during last month of period.

Source: Biennial Reports, Department of Social Welfare, State of California; July 1, 1936–June 30, 1938; July 1, 1938–June 30, 1940.

Since July 1, 1936 the Federal Government has been participating and assisting by grants to the State for blind aid, pursuant to the Social Security Act. Between July 1, 1936 and June 30, 1938 the Federal Government contributed $1,687,747.14 for assistance and $84,389 for administration expenses.

Prior to January 1, 1940 the Federal Government contributed one-half of the grants up to $30 per month; since that date it contributes one-half up to $40 per month.

Number of persons assisted and amounts expended by the counties in payment of county indigent aid pursuant to Sections 2500 to 2615, Welfare and Institutions Code, from July 1, 1937 to June 30, 1941 [1]

	Number of persons [2]	Total amount of aid
July 1937 to June 1938	79,875	$9,931,526.98
July 1938 to June 1939	74,027	9,858,224.93
July 1939 to June 1940	71,176	9,561,033.78
June 1940 to July 1941	64,508	9,381,449.81

[1] No figures are available for years prior to July 1, 1937.

[2] Number of persons being assisted during last month of period.

Source: Preliminary Public Assistance Release, June, 1941, Department of Social Welfare, State of California.

Number of persons assisted and amount of funds expended for unemployment relief in California from January 1, 1933 to December 31, 1935, by the Federal, State, and local governments

	Number of persons [1]	Amount expended
1933	747 812 (August)	$39,138,769
1934	839,491 (December)	66,829,712
1935	864,801 (January)	129,139,977

[1] Represents number of persons receiving aid in the month indicated, which is the largest in any month during the year.

(For subsequent periods see succeeding table.)

Sources of above funds:

	Total	State	Federal	Local
1933	$39,138,769	$1,738,288	$17,922,002	$19,478,480
1934	66,829,712	45,054	48,433,881	18,350,776
1935	129,139,977	36,406,299	91,697,713	1,035,965
	235,108,459	38,189,642	112,726,418	38,865,221

Source: Review of activities of State Relief Administration, 1933–1935.

Number of persons assisted and amounts expended by the State relief administration for the relief of hardship due to unemployment from July 1936 to May 1941

	Number of Persons	Total Amount of Aid
July 1936 to June 1937 [1]	([2])	$22,825,475.78
July 1937 to June 1938	231,177	25,696,435.37
July 1938 to June 1939	291,631	32,152,411.02
July 1939 to June 1940	246,135	39,549,376.06
July 1940 to May 1941	143,025	19,582,774.83

[1] Data not available for period from January 1, to June 30.
[2] Data not available.
(For previous periods see preceding table.)

Source: Preliminary Public Assistance Release, June 1941, Department of Social Welfare, State of California; monthly Statistical Summary, December 1940, California State Relief Administration.

Exhibit 8.—*Summary of Statutory Operations in California Under Welfare and Institutions Code and State Relief Administration Statutes With Particular Reference to Employability and Residence Policies*

I. Operations Under Welfare and Institutions Code.

Prior to April, 1933, the administration of relief in California was accomplished almost entirely through the agency of the various counties of the State under laws which were in 1937 codified in the Welfare and Institutions Code.

Briefly, under this plan the State, itself, directly maintained certain State institutions, principally for the insane, but for most other purposes of relief acted indirectly through apportionment of State funds to the various counties to assist them with respect to aid within the counties for orphans and needy children, aged persons and needy blind, all substantially as set forth in the present Welfare and Institutions Code, direct relief to other indigents being entirely the burden of the counties.

Prior to April, 1933, there was no agency in California for the direct administration of relief by the State.

Residence Eligibility Rules Applicable to the Counties

Prior to 1927, the residence requirement for eligibility to aid from the various counties under the existing plan was three months in the county. (Stats. 1901, p. 636)

In 1927, this Act was amended (Stats. 1927, p. 430) to require as a condition of relief from the counties, a residence of one year in the State. The provision as to three months residence in the county remained unchanged. In 1931 this residence requirement was increased to three years in the State and one year in the county (Stats. 1931, p. 145). In 1933 the Act of 1901 and its above-mentioned amendments were repealed and a substitute act passed (Stats. 1933, p. 2005) continuing the residence requirement of three years in the State and one year in the county as a condition to relief and aid from the various counties. This residence qualification has remained to the present time and is now found in sections 2555 and 2556 of the Welfare and Institutions Code.

Employability Rule Applicable to Counties

Prior to 1933, under the statutory plan for relief through the counties, relief was available to indigent persons in the counties, whether employable or unemployable (Stats. 1901, p. 636, sec. 1) and this rule was expressly declared in 1933 (Stats. 1933, p. 2005, sec. 1) and has been carried into the present Welfare and Institutions Code, sections 2500 and 2505.

Non-resident Rule Applicable to Counties

In 1933, under this statutory plan for relief through the counties, *emergency* relief was available to dependent non-residents, i. e., persons not having the required State and county residence (Stats. 1933, p. 2005, sec. 10) and this rule has been carried into the present Welfare and Institutions Code, section 2501.

In 1933, under this administrative plan for relief through the counties, provision was made for removal of non-resident indigents to other counties or states, when such indigents will thereby cease to become public charges, or when friends or relatives agree to assume the cost and expense of the care and maintenance of such indigents, or when such indigents are legally public charges in the places to which they are so transported (Pol. Code sec. 4041.16, Stats, 1929, p. 1458) and when information at hand reasonably tends to show that such person has a legal residence in such state or county (Stats. 1933, p. 2005, sec. 10) and these rules have been carried into the present Welfare and Institutions Code, sections 206 and 2502.

Rule Applicable to Counties With Respect to Responsibility of Relatives

In 1933, under this statutory plan for relief through the counties, provision was made to the effect that if an indigent has living within the State, a spouse, parent or adult child, able to support the indigent, such indigent is not eligible for aid except emergency aid pending determination of the responsibility of the kindred (Stats. 1933, p. 2005, sec. 2) and this rule has been carried into the present Welfare and Institutions Code, section 2576.

In this respect, the law of California makes it the legal duty of the father, the mother and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. (Civil Code section 206) Husband and wife have mutual obligations of support (Civil Code sec. 155) and, specifically, a wife is required to support a husband who is unable from infirmity to support himself (Civil Code section 176). See also re criminal offenses re non-support of parent, child or wife, Penal Code Section 270, 270a and 270c.

II. Operations Under State Relief Administration.

In the year 1933 economic conditions became such that the counties of California, engaged in the administration of relief under the existing statutory plan, were confronted with demands beyond their abilities and in that year the State of California first entered the field of direct relief through a State agency.

This agency was known, first as the State Emergency Relief Administration, consisting of State Emergency Relief Administrator and a State Emergency Relief Commission, and later in 1935 when its tasks proved to be more than emergency, as the State Relief Administration, consisting of a State Relief Administrator and a State Relief Commission.

This State Relief Administration, known in California as the SRA, has continued in existence since 1933 and has operated independently of the statutory plan for relief through counties, as provided in the Welfare and Institutions Code, and its predecessor statutes, although the county plan has at all times continued in existence and operation, the SRA independently supplementing the county plan to meet the new and continuing burden of relief throughout the State.

The inception of SRA was by an act known as "The Unemployment Relief Bond Act of 1933" (Stats. 1933, p. 677, effective June 27, 1933), which provided for an initial bond issue of 20 million dollars to be made available, through the emergency SRA (which was already administering Federal funds granted to the State for relief of destitution caused by unemployment), in the form of loans in aid of counties and municipalities in administering relief work, and this bond issue was validated by Constitutional Amendment (Art. XVI, sec. 9, ratified June 27, 1933). The Act empowered the emergency SRA to make rules and regulations as to the manner in which the funds should be expended and as to the standards of relief.

Approximately a year later the State ceased to distribute State funds through loans to counties and commenced the practice of administering State funds by direct grants "for relief of hardship and destitution due to and caused by unemployment" through the State Relief Administration, which was given the powers of the previous emergency SRA and also power to determine general policies of relief administration, and a further bond issue of 24 million dollars was authorized (Constitutional Amendment, Art. XVI, sec. 10, adopted November 6, 1934).

In 1935 the legislature passed a further Act (Stats. 1935, p. 1850, Chap. 675, effective September 15, 1935) for the relief of hardship and destitution due to and caused by unemployment, and giving to the SRA further power to establish rules and regulations relating to eligibility for relief, and appropriating from the General Fund of the State a further 24 million dollars for the purpose in addition to a previous similar appropriation of 24 million dollars on June 14, 1935 (Stats. 1935, p. 1176, Chap. 341) and in addition to a further previous appropriation from special funds for the same purpose amounting to $384,857.35 (Stats. 1935, p. 1586, Chap. 515).

Thereafter further appropriations from the general fund of the State were necessary from time to time to meet every recurring and increasing emergencies: Stats. 1937, Ch. 157—($48,000,000); Stats. 1938, Ch. 10—($4,900,000); Stats. 1939, Ch. 160—($3,500,000); Stats. 1939, Ch. 668—($35,525,000); Stats. 1939, Ch. 1—($19,975,000); Stats. 1940, Ch. 5 (1st Extra Session)—($1,600,000); Stats. 1940, Ch. 12 (1st Extra Session)—($12,500,000); Stats. 1940, Ch. 45 (1st Extra Session)—($24,347,091); Stats. 1940, Ch. 1 (3rd Extra Session)—($1,450,000); Stats. 1941, Ch. 54—($2,042,000); Stats. 1941, Ch. 234—($650,000); Stats .1941, Ch. 601—($1,000,000).

The total of bond issues and appropriations for SRA, 1933–1941 have amounted to $223,884,767.35.

We wish to point out that SRA was not subject to the residence requirements applicable to administration of relief through the counties under the Welfare and Institutions Code and its predecessor statutes hereinabove referred to.

Nor, was the SRA subject to any restictions with respect to eligibility for relief except the general requirement of the SRA statutes that the funds be used for relief of hardship and destitution due to and caused by unemployment and except such restrictions respecting residence, eligibility, etc., as the SRA itself might prescribe.

ELIGIBILITY POLICIES OF SRA RE EMPLOYABILITY

As early as September 16, 1935, the SRA had in force a policy of referring unemployable persons to the various counties for relief upon the theory that hardship and destitution was not "caused by unemployment" within the meaning of the SRA statutes if the person was not employable and an opinion to this effect was rendered by the Attorney General on October 24, 1935 (Opinion No. 10248).

An employable person, by rules and regulations, was one not totally incapacitated for gainful employment, who was willing and able to perform gainful employment and was available for such; who was not prevented from accepting employment by family responsibility (care and supervision of children or dependent person); whose need was due to and caused by unemployment, and who was 18 years of age or over.

Eligibility Policies of SRA re Non-Residents (1933–1935) and Related Operations of Federal Emergency Relief Administration re Transients.

From 1933 to 1940 the SRA statutes contained no provision respecting State or county residence as a condition to SRA relief but a rule of SRA was in effect requiring one year residence in the State.

This rule was followed as to relief with State money between 1933 and June 1936, during which period special grants of Federal funds were received from the Federal Emergency Relief Administration (Emergency Relief Act of 1933, 48 Stats. 55) by the SRA and earmarked for the relief of needy persons having no legal settlement in any state, legal residence in a state being defined by FERA Rules and Regulations No. 3 (July 15, 1933) as residence in a state for one continuous year or longer. In other words, during this period (actually September 1933–June 1936) the state non-resident needy were assisted by the Federal Transient Service, maintained through FERA grants for the purpose, and during this period a total of $8,978,713.18 was made available to the State by FERA.

On September 6th, 1935, the FERA notified the California SRA that no further such state non-residents were to be accepted for relief through the FERA Federal Transient Service.

Eligibility Policies of SRA re Non-Residents (1935–1939)

Faced with this emergency, SRA modified its rules and policies as follows:

Bulletin 45, September 12, 1935—Persons already registered in Federal Transient Service were to be cared for until further instructions, out of balances of FERA transient funds still on hand.

Bulletin 52, October 17th, 1935—State non-residents will be accepted by SRA, both employable and unemployable, direct relief to be given to non-residents of counties, women and boys, 16–21 years, and camp relief to unemployable unattached men and the same as far as possible to employable unattached men.

Bulletin 59, November 30, 1935—Refusal of transient families, both employable and unemployable, and unattached women, to return to legal residence, after verification, is a cause for termination of relief, but relief will continue for such of these as have no legal residence in other states.

Bulletin 59A, December 14, 1935—No form of relief will henceforth be available for unattached able-bodied transient men.

Thereafter, SRA adopted the policy of granting emergency relief from State funds to non-residents pending verification of their legal residence, and this policy continued until June 1938.

From June 1938 the SRA modified its policy of relief to non-residents by granting relief only to such non-residents as indicated in advance a willingness to return to place of residence when verified and this policy continued to January 1939.

In January, 1939, the foregoing restriction was eliminated and the policy of June 1936—June 1938 resumed, but in March, 1939, the restriction of June 1938—January 1939 was again put in effect and such policy continued until the present time.

SRA Statutory Eligibility Restrictions of 1940 re Residence.

On April 29, 1940, the legislature by Stats. 1940 (Extra Session), Chap. 12, when making an appropriation of $12,200,000 to SRA, for the first time placed statutory restrictions respecting residence on the use of its appropriation and provided that the money appropriated should not be expended for the relief of any person after April 1, 1940, who had not resided continuously in the State for a period of three years, or who had lost State residence by remaining away from the State for an uninterrupted period of one year; the foregoing limitation did not apply to a person who on February 1, 1940, was receiving or had received relief from the State Relief Administration or was on that date certified or had been certified to the Work Projects Administration by the State Relief Administration, and had not left the State with intent to reside elsewhere, and had not remained away from the State for a period of one year.

On May 29, 1940, the legislature by Stats. 1940 (Extra Session), Chap. 45, when making a further appropriation of $24,347,091, increased this residence restriction on the use of the appropriation and provided that none of the appropriation could be expended for the relief of any person who:

> (1) Had not either (a) lived continuously in the State for five years, if he began to live in the State after June 1, 1940, or (b) lived continuously in the State for three years if he began to live in the State on or before June 1, 1940.
>
> (2) Had lost State residence by remaining away from the State for an uninterrupted period of one year.

It was provided, however, that the appropriation could be expended for the relief of any person who (1) on February 18, 1940, was receiving or had received aid by State Relief Administration or was certified or had been certified to the Work Projects Administration by the State Relief Administration.

Related Operations of Federal Farm Security Administration re Transients, 1938 to Date

After February of 1938, non-resident transients who were not eligible for relief from the SRA because they refused to return to their place of residence after verification, or refused to indicate a willingness in advance to return to place of residence after verified, were referred to the Farm Security Administration, U. S. Department of Agriculture, known as the FSA.

This administration was created on September 1, 1937 by a memorandum of the United States Secretary of Agriculture, as a successor to the Resettlement Administration, which had been created originally by Executive Order of the President of the United States on April 30, 1935 and later transferred to the United States Department of Agriculture by Executive Order on December 31, 1936.

In the Emergency Relief Appropriation Act of 1937 (50 Stats. 352; 15 U. S. C. A. 721–728) it was provided that the money appropriated would be available for expenditure by the Resettlement Administration for such loans, relief and rural rehabilitation for needy persons as the President may determine. In the Work Relief and Appropriation Act of 1938 (52 Stat. 809) which made appropriations to various Federal agencies "in order to provide work relief on useful public projects, and relief" a specific appropriation was made to the Department of

Agriculture, which "sums shall be available for administration, loans, relief and rural rehabilitation for needy persons". The Emergency Relief Appropriation Act of 1939 (53 Stat. 927) made an appropriation to the Department of Agriculture "in order to continue to provide assistance through rural rehabilitation relief to needy farmers and relief to other needy persons in the United States." The Emergency Relief Appropriation Act of 1941 (54 Stat. 611) made an appropriation to the Department of Agriculture for the same purposes as provided for in the Act of 1939.

Beginning in February 1938 the Farm Security Administration commenced its program of Emergency Relief grants in California to meet the relief problems of agricultural migrants in California by supplying food and clothing to such migrants where destitute but ineligible for State relief. Only employable persons of agricultural background, who lacked State residence were assisted. ("The Work of the Farm Security Administration in Region IX: 1938–39"; idem, 1940–41). The Farm Security Administration also provided, and now provides medical service for such person, and has established and maintained migratory labor camps to provide housing for such persons in addition to providing the services above. Since the inception of these programs in 1938 the following sums have been expended in California to June 30, 1941, according to a letter from the Farm Security Administration in Washington, D. C. dated September 15, 1941: grants to individuals for subsistence—$3,902,160; commodities and food stamps purchased—$2,134,447; grants to Agricultural Workers Health and Medical Association—$2,389,619; migratory labor camps—$5,061,491; Total—$12,418,617.

As of June 1, 1941 the funds theretofore appropriated for expenditure by the SRA for relief of hardship and destitution caused by unemployment were exhausted. No appropriation was made to the SRA by the legislature for such purposes for the period subsequent to June 1, 1941, and consequently no relief is now being given in California by the State directly. However, as has been indicated earlier, the State supplements county funds for aid to the aged, aid to needy children and aid to needy blind, by apportioning State funds to the various counties, but the counties must bear the entire burden of relief to indigents generally.

EXHIBIT 9.—*Summary of Policies and Regulations of the State Relief Administration With Respect to "Hardship and Destitution" Within the Meaning of the Various State Relief Administration Statutes*

All State Relief Administration statutes appropriated funds for the "relief of hardship and destitution due to and caused by unemployment."

The terms "hardship and destitution" were not defined in any of the statutes relating to the State Relief Administration (herein referred to as the SRA) but by rules and regulations made pursuant to statutory authorization, policies and regulations have been established setting forth eligibility requirements for relief from the SRA.

In Chapter I of the SRA manual, revised to December, 1940, under the heading "Rules of Eligibility and Standards for Assistance" the SRA compiled together all existing policy statements and regulations. We set forth herein excerpts from the manual, quoting only the general policy rules and omitting such further rules as merely particularize these general policies.

Eligibility

Rule 1–101 "*Eligibility—General Policy*"

> "State unemployment relief funds are provided to relieve hardship and suffering due to and caused by unemployment. A complete and careful study of the needs and resources of each applicant for unemployment relief must be made in order that a decision as to his eligibility may be based upon sound evidence. Such a study should result not only in the determination of an applicant's eligibility for relief, but should include a plan for treatment of his problem, looking toward reemployment.
>
> * * * * * * *"

Rule 1–110 "*Eligibility Requirements*"

> Eligibility for unemployment relief is based upon six principal factors: (1) *alien status*, (2) *residence*, (3) *employability*, (4) *lack of resources for support of any member of the family group* (including inability of responsible relatives to support), (5) *installment payments*, and (6) *automobiles*. The applicant's

situation must place him within rigidly exclusive limits in each of these categories or relief shall be withheld. Eligibility shall be determined by an investigation which, in the minimum, shall include a thorough interview with the applicant and such collateral calls as may be necessary to verify the above factors. *Determination of those factors must supersede and control any investigation into related matters which might prove helpful in meeting social problems such as delinquency, marital difficulties and health when they do not bear directly on the problem of eligibility.*

Note: We omit quotation of the rules relative to alien status, and also rules relating to residence and employability, these last two matters having already been briefly summarized for the court in Supplement Exhibit 8.

Resources

Rule 1–401 "*Resources—General Policy*"

"Applicants for unemployment relief will be expected to use to its fullest extent any available financial resource of any member of the family for support prior to the receipt of relief from this agency. Applicants with sufficient cash on hand to enable them to maintain their families until receipt of the first relief check may be accepted if the amount of cash is deducted from the first check. Liquid assets include deposits in banks, postal savings, the value of building and loan certificates, and stocks and bonds. Such liquid assets must be exhausted before acceptance for relief. * * *"

Rule 1–410.1 "*Real Property—General Policy*"

"Ownership of a home by an applicant and occupied by the applicant and his dependents does not necessarily disqualify such applicant for relief. Where home property can command a substantial rental which amount would be adequate for property payments, if any, and also would be sufficient to meet the family's needs according to SRA basic budget, consideration should be given to such plan in order that the family will be enabled to be independent of relief. Such cases are to be referred to the State Office before acceptance."

Rule 1–412.1 "*Property Other Than Home of Applicant—General Policy*"

"Where the applicant owns property other than that occupied as a home, such property should be utilized as a resource as far as possible. It is not the policy of the SRA to pay rent for relief recipients living away from property which they own and is habitable unless for good social reasons the family is not able to reside thereon."

Rule 1–420.1 "*Automobiles—General Policy*"

"An automobile represents an investment which is a potential resource. In some instances it may be retained provided the possession is in accordance with the following policy. In other instances adjustments will be required within a 90-day period. In general, the Blue Book shall be the basis for determining car values. However, Blue Book value is based on good running condition and when the car has been damaged or resale value otherwise lessened, an exception may be made based on actual value with the approval of the Case Supervisor. Purchase of a car while on relief *may* be sufficient basis for withdrawing aid. Ownership of more than one automobile or truck in the same family is not necessarily a bar to receipt of relief; however, when more than one car is owned, they should be considered potential resources for family needs.

"Relief may not be extended to any person who possesses or whose family possesses more than one automobile or truck unless such person shall deliver the license plates of all but one of the automobiles to the SRA. A hook-on trailer is not subject to this restriction."

Rule 1–420.3 "*Car Owners Not Eligible at Intake or as Continued Cases*"

"A car owner is not eligible who possesses an unencumbered car or truck which is a current model or one of the previous two years, whether or not the car is a necessity. The applicant may choose to make a loan or to turn it in for a cheaper and paid up model (with a Blue Book value of $250.00 or less), using the cash balance as a resource."

Rule 1–431 "*Insurance—General Policy*"

"It is recognized that heads of families and their dependents may carry whole life insurance in a reasonable amount where protection therefrom may be obtained for a minimum premium. The amounts allowable as hereinafter provided for relief recipients and dependents should be adhered to in all cases, except where otherwise provided. An explanation of the various classes and types of life insurance may be found in the appendix. These regulations apply where insurance is owned and the policy is retained by a member of the relief group and contemplates protection to them. Transfer of a policy to a person outside of the relief group to avoid adjustment will not be recognized. When the insured person is not reinsurable because of age and/or health, cases should be referred to the State Office before adjustment."

Rule 1–432 "*Allowable Insurance*"

Rule 1–432.1 "Head of Family or Spouse"

"The head of the family and spouse may carry individually or together a total of $1,000.00 face value whole life insurance policy, distributed in any manner. (Endowment at age of 75 or 80 is considered whole life). In order to avoid jeopardizing this policy plan, premiums covering a period of two years are allowed to remain in the cash reserve of policy. All available cash loan value exceeding this allowable amount must be utilized through a policy loan. Persons having excess insurance may be accepted at intake for a period of not more than 30 days pending adjustment."

Rule 1–432.2 "*Single Persons*"

"Single, unattached individuals receiving relief as single persons may carry whole life policies having a face value not exceeding $1,000.00. Available cash loan value exceeding one year's premium requirements must be utilized through a policy loan."

Rule 1–440 "*Earned Income*"

Rule 1–441.4 "*Deduction of Earnings at Point of Intake*"

"At time of application for relief, all earnings from private employment of adult members of the family are deductible in full. Where income is from full-time employment of either spouse or of an adult child, who is employable head, as defined in Section 1–441.2, the family is not eligible for relief, irrespective of the amount of earnings. * * *"

Rule 1–441.2 "*Full-time Employment—Definition*"

"Full-time employment may be defined as work for salary, wages or other compensation which employs an individual regularly thirty hours or more per week."

Rule 1–441.5 "*Deductible Earnings—Continued Cases*"

"If the total earnings of adult members equal or exceed the SRA budget, the family is ineligible for aid. When either spouse or adult child who is the employable head secures full-time employment, the case is to be closed irrespective of the amount of earnings. * * *"

Rule 1–469 "*Contributions From Relatives or Friends*"

"Legally responsible relatives are spouse for spouse, parent for minor child, adult child for parent, or any group of them living within the State, who have sufficient financial ability to support the applicant for relief. Relatives are expected to assume such responsibility as their financial condition permits. The full amount of income received from relatives and friends shall be deducted from the budget. When an adult child who is the current employable head of a relief group, secures employment away from home, careful consideration must be given to his ability to assist and to the possibility that he had moved away in order to avoid deduction of his earnings. If the employment is at such a distance that the adult child could not accept the work and continue to live at home and conditions are such that the family cannot move with him, no action should be taken other than to deduct the amount of contribution he is able to make. If it appears that the youth has moved solely to avoid deduction of earnings and could remain at home, the case should be closed or a deduction made for earnings in the same amount as though he had remained at home. * * *"

Special Policies

Rule 1–840.1 "*Installments—General Policy*"

"While a family might legally receive assistance while making installment payments because the conditions of the purchase fall under one of the provisions permitting payment from relief funds so far as date of purchase or type of article is concerned, it is important to take cognizance of the amount and regularity of the payments as an indication of possible undeclared income or resources. A family cannot reasonably spend a substantial amount of the SRA budget for installment purchases and have a sufficient amount remaining for food, rent and utilities. All income, deductible and non-deductible, is subject to installment payment regulations."

Rule 1–840.4 "*Eligible Payments*"

"Eligibility is *not* affected where the purchase is for a necessity, irrespective of the amount of the installment payment, when:

1. The purchase was made prior to the receipt of any relief under Senate Bill #81, effective 2/24/40. or under Senate Bill #90, effective 6/1/40.
2. The purchase was made after receiving relief under Senate Bill #81, but before reapplying under Senate Bill #90."

Rule 1–840.5 "*Ineligible Payments*"

"Eligibility is affected where payments are made in excess of $5.00 per month, except for essential food and clothing, (other necessities not exempted) and further aid cannot be granted while payments are continued where:

1. Article other than essential food or clothing was purchased while receiving relief under Senate Bill 81 or Senate Bill 90.
2. Article other than essential food or clothing was purchased subsequent to receiving relief under Senate Bill 90. This applies even though the purchase was made while the case was closed.

Eligibility *is* affected even though payments are less than $5.00 per month and regardless of date debt was incurred if articles purchased are not necessities as defined in Section 1–830.2."

Note: Senate Bill 81 provided in substance that money received for relief was to be expended only for necessities. Senate Bill 90 provided that relief money could not be used in the purchase of personal property other than necessities where payments were in excess of five dollars per month when the debt was incurred after February 28, 1940 and recipient was then receiving relief.

Exhibit 10.—*Collection of Cases in Other States Based on Statutes Similar to California's Welfare and Institutions Code Section 2615.*

Barkhamsted v. *Parsons*, 3 Conn. 1 (1819)

A statute provided a penalty for bringing into the State a poor and indigent person and leaving that person in a town of which he was not an inhabitant. The defendant was a resident of Massachusetts, accused of bringing an indigent mother and her three children, not the family of the defendant, into Connecticut. Although the evidence showed that the actual transportation was done by defendant's son, a minor, at the defendant's direction, the conviction was upheld and the penalty enforced, the court taking the view that his son acted as his agent.

Thomas v. *Ross & Shaw*, 8 Wend. 671; 11 N. Y. C. L. 509 (1832)

Suit was brought for a penalty for bringing a pauper from one town to another within the same county. Judgment for plaintiff was affirmed, despite the defense that the statute applied only to bringing a pauper from without the State. In construing the provision the Court held that within the phrase "any city or town within this State" the words "within this State" were surplusage and that, therefore, the statute applied to the case at bar, stating:

> "The offense consists in bringing them into any town, without reference to the place from which they shall have been brought. * * * It is totally immaterial whether the person be brought from another State or another town in this State. The offense consists in bringing a burden upon the town."

Coe v. *Smith*, 24 Wend. 341; 14 N. Y. C. L. 631 (1840)

This was an action to recover moneys expended by plaintiffs to support a pauper, whom defendant should have maintained and whom defendant removed from one county to another with intent to burden the latter. Judgment for plaintiffs was reversed under a statute providing a penalty for removing an indigent from one city and county to another with intent to burden the latter.

The court's reasoning was:

> "Even where a person brings a pauper from any place out of the State into a county within it, he is neither subject to the penalty, or to the maintenance of the pauper, as imposed by the 64th section, without the existence of an intent to charge the county."

and no such intent was proven.

Windfield v. *Mapes*, 4 Denio 571; 17 N. Y. C. L. 676 (1847)

An action was brought for a penalty for bringing a poor person into New York City from Pennsylvania with intent to charge that city with support. Conviction was upheld.

William v. *Franklin*, 39 Ill. 21 (1865)

The statute provided a $100 penalty for bringing and leaving a pauper in any county of the State, knowing him to be a pauper. The defendant was convicted of bringing a pauper from one county to another within the State and this conviction was affirmed. No constitutional question was raised and the court held that the conclusion of the jury was justified by the facts.

Dover v. *Wheeler*, 51 Vt. 160 (1878)

This suit was based on a statute providing a penalty for bringing an indigent into a town of Vermont with intent to charge such town with support. The indigent was brought into Vermont from Massachusetts by the defendant, who was an employee of the Board of Charities of Massachusetts and who had brought the indigent into Vermont in the course of executing a statute of Massachusetts authorizing the indigent's return to Vermont. The court held, however, that the indigent was a citizen of Massachusetts and that the Vermont statute had been violated and rendered judgment for plaintiff town against the defendant.

Poor v. *Nelson*, Mich., 42 N. W. 797 (1889)

The statute provided:

> "Any person who shall bring or remove or cause to be brought or removed, any poor or indigent person, from any place without this state, into any county within it, with intent to make such county chargeable with the support of such pauper, shall forfeit and pay $50.00 * * * and shall also be obliged to convey such pauper out of the state or support him at his own expense."

The defendant had brought into Michigan a pauper from Iowa. It was proven that the person was an indigent and was brought into the State by defendant with intent to charge the county, but the court refused to enforce the penalty because it was not shown that the plaintiffs had incurred any expense for the pauper or any liability therefor.

State v. *Cornish*, 66 N. H. 329; 21 Atl. 180 (1890)

The statute provided a fine and imprisonment for bringing and leaving in a town of New Hampshire a poor and indigent person of another State, knowing that fact, and with intent to charge the town. No constitutional question was raised and the conviction was upheld upon the ground that it was no defense that the defendant had acted in good faith and under a mistake of fact with respect to place of settlement.

Commissioners of Pitkin v. *Law*, 3 Colo. App. 328; 33 Pac. 143 (1893)

The statute provided a penalty for brinigng and leaving paupers in any county of the State, knowing them to be paupers. The statute was held applicable to bringing a pauper from one county to another within the State. Judgment for defendant was affirmed because:

> "The obvious intention of the Legislature was to punish any person who knowingly and intentionally caused a pauper to be taken from the county where domiciled and transported to another, with the knowledge and intention of relieving the county of domicile from the charge of support and

> making the person a charge upon the other county. In order to warrant a conviction it must transpire beyond controversy that the person was a pauper within the legal definition of the word; had legal domicile in the county from which the removal was made, and not in the county to which taken or sent; and a knowledge of these facts by the person charged, from which the intention if not expressed could legally be implied."

The court concluded that there was insufficient evidence to prove these elements.

Risner v. *The State*, 55 Ohio App. 151; 9 N. E. (2nd) 151 (1937)

> "The action is a civil suit to recover a judgment in the nature of a penalty for the alleged violation by the defendants of the provisions of section 2555, General Code, which provides as follows:
>
> 'If a person transports, removes, or brings or causes to be transported, removed or brought a poor or indigent person into a city, township, or county in this state, without lawful authority, and there leaves such poor or indigent person, knowing that such city, township, or county will probably become chargeable with his support, the person so offending shall forfeit and pay the sum of fifty dollars for each such offense, for the use of the poor of the city, township or county in which the indigent person is left, to be recovered by civil action, in the name of the state, before any court of competent jurisdiction.' "

Defendant brought an individual from Kentucky to Ohio and the case turned on the question of whether the Kentuckian was "a poor or indigent person". This court held that the proof was insufficient, defining that term as follows:

> "In order to determine whether there is such failure of proof, we will consider the meaning of the phrase 'a poor or indigent person' as used in that section.
>
> Section 2555, General Code, appears at the end of the chapter on county commissioners. It is one of a group of miscellaneous sections concerning indigent persons who are a charge upon the public. The section is what is technically known as 'a poor law'. It is also a penal law, and is therefore to be strictly construed.
>
> In Ruling Case Law, 703 and 704, in commenting upon poor laws, it is stated:
>
> 'The word "poor" is used in two senses, the one as opposed to the word "rich", the other as indicating those who are entirely destitute and helpless, and therefore dependent on public charity. It is in the latter sense only that the term is used in the poor laws. The term "pauper" is likewise used in two distinct senses, though not so divergent as in the case of the term "poor". In the one case it is synonymous with the term "poor person" as understood in the poor law, meaning one destitute and a proper subject for public aid. In the other and more technical sense it means one who is actually receiving public aid, one who is eating the public bread. For general purposes the terms "poor person", "pauper", "indigent" and "destitute" may be regarded as synonymous.' "
>
> "And in 48 Corpus Juris, 428, it is stated that, generally the terms 'pauper', 'poor', 'poor person', 'indigent person', 'person in distress', and so forth, in statutes providing for the relief of such persons, are used to describe that class of persons who are so destitute and helpless as to be dependent for their support upon public charity.
>
> "Applying these definitions to the provisions of section 2555, General Code, it is clear that the words 'poor or indigent' modifying the word 'person' are either synonymous as indicating those who are entirely destitute and helpless and therefore dependent on public charity, or that the word 'poor' is used in the technical sense as indicating one who is actually receiving public aid, and the word 'indigent' is used in the nontechnical sense as meaning one destitute and a proper subject for public aid."

The conviction of defendant was reversed on the ground that the burden was on the plaintiff to prove that the person alleged to be an indigent was (1) actually receiving public aid, or (2) was entirely destitute and helpless and therefore dependent on public charity, and that they had failed to do so.

Exhibit 11.—*Collection of cases based on statutes authorizing the removal of poor and indigent persons from one county to another or from one state to another, including quotation from the dissenting opinion in the Chirillo case from New York.*

Overseers of Gilpin v. *Overseers of Park*, 11 Atl. 791 (Pa. 1888).

An order for the removal of a poor person was obtained by a town on the ground that the individual was likely to become a public charge. The order, obtained without notice to the individual concerned, was reversed because he was not actually a pauper at the time, the Court stating that notice is required under such circumstances although it would be otherwise if the individual was already in receipt of relief.

Lovell v. *Seeback*, 45 Minn. 465, 48 N. W. 23 (1891).

The action was brought by the plaintiff for forcible removal of a pauper from one county to another, the applicable statute providing that, if relief is applied for by a person without a legal settlement in the county, such person shall be warned to depart, and if he fails so to do and is likely to become a public charge, then the county may issue an order directed to the Sheriff to return the person to the county of his settlement.

The question of the constitutionality of the statute was raised, but the order directing removal was affirmed not withstanding. The court stated:

> "While the statutes in force here since our territorial organization have been subject to the objections on constitutional grounds which are here urged, we are not aware that hitherto their validity has been questioned. In view of the fact that such laws, which must have been very often put into practical operation, have been in force here, and, as we suppose, unquestioned, for a period of more than 40 years, and long before the adoption of our constitution, it may fairly be said that they have been generally acquiesced in as a valid exercise of legislative power."

Town of Bristol v. *Town of Fox*, 159 Ill. 500, 42 N. E. 887 (1896).

Plaintiff town brought an action to recover moneys expended for support of paupers for which the defendant town was alleged to be liable. The statute provided that, if a person becomes chargeable as a pauper in a town in which he was not a resident for twelve months preceding, written notice should be sent to the place of residence requesting removal and for the reasonable charges accrued and to accrue for the care of the pauper. Judgment for defendant town was reversed despite its defense that it had offered to remove the paupers and they had refused. The court held that the defendant town had the right to forcibly remove them and was therefore liable because:

> "Inability for self-support renders it necessary that the pauper should be supported as a public charge, and the law has designated what political subdivision of the people shall be charged with the support, and has therefore given the body the means of controlling the acts of the pauper to the extent necessary to render it convenient for his support. So soon as he becomes a charge, and while he remains so, he ceases to be a free agent, but is in the hands, and to a certain extent under the control, of the public officers intrusted with the execution of the poor laws."

Harrison v. *Gilbert*, 71 Conn. 724, 43 Atl. 190 (1899).

The court upheld the authority of a town to require the removal of a pauper to his town of settlement, and on the constitutional question the court said:

> "No constitutional right was violated by the proceedings in controversy. Town paupers belong to a dependent class. The law assigns them a certain status. This entitles them to public aid, and subjects them, in a corresponding degree, to public control. There is nothing in the statutes under which the defendants justify which pushes this right of control further than is reasonably adapted to keeping the public burdens within due bounds. McCarthy v. Hinman, 35 Conn. 538. Economy in the administration of relief to the town poor may require their concentration under one roof."

Hilborn v. *Briggs*, N. Dak. 1929, 226 N. W. 737.

The defendants attempted to remove plaintiff indigents from North Dakota to Minnesota under a statute permitting overseers of the poor to remove from a township anyone likely to become a public charge whose legal residence was elsewhere. Judgment was for the plaintiffs on the ground that the statute only permitted a removal from one poor relief district to another within the State and not to a district beyond the State boundaries.

In re Barnes, 119 Pa. (Sup. Ct.) 553, 180 Atl. 718 (1935).

Action involved the removal of a pauper from one poor district to another. Judgment for defendant district was reversed under a statute providing that to acquire settlement in a poor district the person must be a resident therein for one year and not become a public charge during that time. The court said:

> "It has been repeatedly held, under our poor laws, that a destitute person receiving aid as such cannot acquire a new settlement while remaining a 'public charge'."

Anderson v. *Miller,* 120 Pa. (Sup. Ct.) 463, 182 Atl. 742 (1936).

The statute gave a county in which a pauper was likely to become a public charge the right to notify the county of settlement and the latter county was required to show cause why an order should not issue directing the return of the pauper to it. Judgment against defendant county (the county of settlement) was affirmed on the ground that no new domicile had been acquired and the likelihood of the pauper becoming a public charge had been substantiated.

In re Chirillo, 283 N. Y. 417, 28 N. E. (2d) 895 (1940).*

> "We pass then to a consideration of the validity of section 71 of the Public Welfare Law as it affects these appellants. Upon this appeal we are concerned only with the removal of a class of persons situated as are these appellants, namely, those coming into the State of New York who have had a legal settlement for the purposes of relief in another State of the United States, or, as section 71 puts it, "belongs to * * * any other state * * *." Parenthetically the term "belongs to" has been construed in other States to mean legal settlement the same as held at Special Term and not controverted upon this appeal. (*Town of Washington* v. *Town of Warren,* 123 Conn. 268; *Eden* v. *Southwest Harbor,* 108 Me. 489.) We are not passing either on the constitutionality or on the construction of the provision in the same section where removal is sought upon the ground that the pauper "has friends willing to support him or to aid in supporting him in any other state or country * * *." section 71 may be valid as to the class of persons in the case at bar and not valid in respect to this other provision. (*Hatch* v. *Reardon,* 204 U. S. 152, 160.)
>
> We turn then to consider seriatim the constitutional objections advanced against the power of the State of New York to protect itself against an unprecedented influx of persons on relief or paupers coming from other States. Stating the question in different ways: Is it a privilege or immunity of a citizen of the United States to impose upon any State of his choice the burden of supporting himself and his family before he has satisfied reasonable settlement qualifications, as in the case at bar, of one year? Is there no way short of action by the Congress by which the States, severally or separately, may safeguard themselves from the threat to their security and solvency by incoming numbers of indigent families from other States? Lastly, is a statute designed to safeguard the welfare of the individual and the welfare of the State and to protect a citizen of the United States from starvation and return him to his former place of settlement, where he will receive succor, a violation of the Constitution of the United States?
>
> We take up first the objection based upon a claimed lack of due process under the Fourteenth Amendment and endeavor to show that section 71 is not unconstitutional but a reasonable exercise of the sovereign police power to attain a proper objective. Obviously, the State of New York, prior to the adoption of the United States Constitution, possessed the powers of a sovereign nation, which included the power to refuse admittance to, or to deport a person coming from, without its borders, whether or not that person crossed the State line with the intention of seeking permanent residence in this State.
>
> Likewise, it is authoritatively settled that the adoption of the Constitution of the United States did not create the power of the State, but only limited such power and, except as so limited, the power of the State remains supreme. (*Carter* v. *Carter Coal Co.,* 298 U. S. 238; 11 Am. Jur. 865, § 171.) How then, may we ask, has there been cut down this fundamental police power of the

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* NOTE: Pages 124–133 is quotation from this *Chirillo* case.

State to enact legislation removing paupers who have not yet acquired a legal settlement in this State, to the place of their last legal settlement? Under the due process clause of the Fourteenth Amendment, the only limitation upon the exercise of the police power must be that it concerns itself with the promotion of the public welfare through having a real and substantial relation to that end, and shall not be unreasonable, arbitrary or capricious. (*Nebbia* v. *People*, 291 U. S. 502.) The historical background and present conditions leading up to forcible removal proceedings demonstrate not only their recognized need, but their reasonableness.

From the time of the early common law, the liberty of the pauper has been curtailed in the interests of the welfare of the various communities. In 1350, by statute, the poor were to remain where they were resident, or to be sent to the place of their birth. (Holdsworth, History of English Law, 390 *et seq.*) In 1662 Parliament enacted the Poor Relief Act (13 and 14 Charles II, ch. 12), which permitted Justices of the Peace, upon complaint of the Overseers of the Poor, to remove by warrant to the place of their last legal settlement, paupers and those "likely to be chargeable to the parish." Counsel for the State of New York has pointed out that this principle of forcible removal of paupers to the place of their last settlement has been projected into the poor law of some thirty States. In 1773 the Colonial Legislature enacted a statute practically identical with the above statute enacted in England in 1662, and since that time successive Legislatures of this State have continued statutes along the same line, culminating in section 71 of the Public Welfare Law. In addition, it should be noted that removals have long since been authorized by what is now section 27 of the State Charities Law (Cons. Laws, ch. 55), which in part reads as follows: "State, non-resident alien poor. The Board and any commissioner or officer of the Department may * * * cause to be removed to the state or country from which he came any such non-resident or alien poor found in any such institution or otherwise supported or relieved at public expense."

Action under these sections has long been the policy of the State Department of Social Welfare, under appropriate rules and regulations, which provide, among other provisions, that settlement in the other State must be definitely established, and that an authorization must be received for the return of such person from the authorized officials in the locality of settlement. "Each proposed removal must be considered on a case work basis and a return effected only when the Commissioner of Public Welfare is satisfied that the welfare of the person and the interest of the State will thereby be promoted. State charges requiring temporary relief and care should be given a reasonable opportunity for rehabilitation unless they desire to return voluntarily."

In addition, in all cases there must be considered not only the welfare of the State, but also the welfare of such person, together with a prior approval of the State Department of Social Welfare, and then the approval and action by the Commissioner of Welfare, who may only apply to the County Judge for the issuance of an order of removal and satisfy the County Judge that the statute has been complied with. Then and then only may the County Judge issue the order to remove the person to the State where he has a legal settlement

In the light of such a statutory history, the objection of arbitrariness and unreasonableness seems weak indeed.

"What is due process of law may be ascertained by an examination of those settled usages and modes of proceedings existing in the common and statute law of England before the emigration of our ancestors, and show not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country." (*Twining* v. *New Jersey*, 211 U. S. 78, 100.)

"The Fourteenth Amendment, itself a historical product, did not destroy history for the States and substitute mechanical compartments of law all exactly alike. If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it." (*Jackman* v. *Rosenbaum Co.*, 260 U. S. 22, 31.) (See, also *Coler* v. *Corn Exchange Bank*, 250 N. Y. 136; Affd., 280 U. S. 218; *Owenbey* v. *Morgan*, 256 U. S. 94.)

The statute in the case at bar is thus a reasonable means adopted by the State in order to prevent financial submersion while engaged in caring for the unfortunates and thwarting the spread of sickness, disease and crime.

It is next contended that the power given to the Congress, "To regulate commerce * * * among the several States * * *" (Art. 1, § 8), renders invalid section 71 of the Public Welfare Law. In the consideration of questions of constitutional construction we are reminded that "unless the party setting up the unconstitutionality of the State law belongs to the class for whose sake the constitutional protection is given * * *," the objections will not be heard, and imaginary cases will not be gone into where, as here, the statute involved may be constitutional as affecting the litigants before the court and may not be constitutional as to others. (*Hatch* v. *Reardon*, 204 U. S. 152, 160.) While the forcible removal of persons who are public charges and not entitled by reason of lack of length of residence to a legal settlement for relief purposes in the State, may to some extent affect interstate commerce, the case at bar does not present such an interference as is forbidden to the State when exercising the police power in defense of State welfare. It is settled by the authorities that, in the absence of congressional pre-emptions, the police power inherent in the States may be exercised within reasonable restrictions, even though there may be interference with interstate commerce. (*City of New York* v. *Miln*, 11 Pet. 102; *Railroad Co.* v. *Husen*, 95 U. S. 465; *Plumley* v. *Mass.*, 155 U. S. 461, 471; *South Carolina State Highway Dept.* v. *Barnwell Bros. Inc.*, 303 U. S. 177; *Ark.-La. Gas Co.* v. *Dept. of Public Utilities*, 304 U. S. 61; *H. P. Welch Co.* v. *New Hampshire*, 306 U. S. 79; *Eichholz* v. *Public Service Commission*, 306 U. S. 268; *Clason* v. *Indiana*, 306 U. S. 439.)

No claim can be advanced that section 71 prevents any person from coming into this State. The statute, as construed below, would seem to have the effect only that, when a person who has not established a legal settlement in this State, applies for public care, he subjects himself to the removal provisions of section 71. Under this law, the State has no power of removal until application is made for State aid. Then, in the interests of the protection of the People from the spread of crime and disease and for the preservation of the financial resources of the State, the latter remits the applicant to the place legally responsible for him under well-settled principles of law.

Appellants further urge that the State had no power to enact section 71 of the Public Welfare Law for the reason that it is in contravention of the provision of the United States Constitution (Art. IV, § 2, cl. 1) which provides that "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." As was said by Mr. Justice ROBERTS in *Hague* v. *C. I. O.* (307 U. S. 496), at page 511: "* * * it has come to be the settled view that Article IV, § 2, does not import that a citizen of one State carries with him into another fundamental privilege and immunities which come to him necessarily by the mere fact of his citizenship in the State first mentioned, but, on the contrary, that in any State every citizen of any other State is to have the same privileges and immunities which the citizens of that State enjoy. The section, in effect, prevents a State from discriminating against citizens of other States in favor of its own."

To hold that this clause protects the right of a citizen to be supported at public expense in any community to which he may journey, it is necessary to find that there is inherent in State citizenship a constitutional right to be supported at public expense free from any limitations whatsoever. This would include a right of the indigent person to live where he will although the crowding into one State may be a menace to society. No such right exists. "Neither aliens nor the citizens of other States are vested by the Constitution with any interest in the common property of this State." (*People* v. *Crane*, 214 N. Y. 154, 161.) Section 71 does not interfere with the right of a citizen of one State to pass through or reside in any other State. Only if on coming from another State he applies for relief at public expense, to which he has no constitutional right, he is bound to accept the relief *cum onero*, or with the limitations of the reasonable provisions of the Public Welfare Law of New York State. If it be for his welfare and for the welfare of the State, he then subjects himself to the possibility of being compelled to return to the State wherein he has a legal settlement. Nor does section 71 of the Public Welfare Law make any discrimination upon the basis of State citizenship, for all who seek public relief must comply with the same requirements for a legal settlement or be subject to forcible removal. (*Douglas* v. *N. Y. R. R.*, 279 U. S. 377.)

It is urged that that portion of the Fourteenth Amendment which affords "to any person within its jurisdiction the equal protection of the laws," renders invalid section 71. There is here, however, no invalid classification. (*Heim* v. *McCall*, 239 U. S. 175; *People* v. *Crane*, supra.) In *Barbier* v. *Connolly*, (113 U. S. 27), it is said, at page 32: "Class legislation, discrimination against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

Lastly, there is no merit to the claim that section 71 is rendered invalid by the constitutional provision that "no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States * * *." It would seem that the privileges and immunities of United States citizenship are none other than those which result from other provisions of the Constitution and from the laws of Congress; that unless some other constitutional provisions or Federal statute prescribes the right claimed to be a privilege or immunity of United States citizens, no further protection may be had by resort to that clause. (*Hague* v. *C. I. O.*, 307 U. S. 496, 519–522; *Slaughterhouse Cases*, 16 Wall. 35, 79–80.) It has been shown above that the statute as herein applied does not contravene other guaranties of the Constitution; nor has the claim been advanced that there is applicable congressional enactment.

Freedom of residence is restricted as to citizens only while on relief. This statute applies whether the citizen is of this State or of another State. Confinement to a poor house or farm may be the result of indigence. No interference is had with the right of any citizen to choose and establish a home. What is controlled is the unrestricted imposition of indigent persons and families without settlement upon a community and State where they cannot establish a home because of their indigent status. Freedom of residence is certainly restricted as to paupers; yet no instance of invalidity has been pointed out as to the poor laws permitting commitment of indigents to poor farms. A condition may often restrict a freedom. Vagrancy is one example; disease is another; and mental deficiency, a third. Such conditions restrict individual rights and freedom in the interest of the right, security and freedom of the rest of the community of the State.

The Public Welfare Law of New York seeks, with due regard to the rights of all those affected, to deal in a humane way with the problem of pauperism. The sovereign police power of the State of New York has been exercised properly and reasonably. Such legislation is permitted by the Constitution of the State, and nothing in the United States Constitution compels a holding that such legislation is invalid.

The order appealed from, in so far as it holds the provisions of section 71 of the Public Welfare Law constitutional, should be affirmed.

LEHMAN, Ch. J., SEARS and CONWAY, JJ., concur with LOUGHRAN, J.; LEHMAN, Ch. J., concurs in separate opinion, in which LOUGHRAN and SEARS, JJ., concur; FINCH, J., dissents in opinion, in which RIPPEY and LEWIS, JJ., concur.

Appeal dismissed."

(Rehearing denied October 8, 1940 in 29 N. E. (2d) 661)

NOTE: This case was later brought into the Federal court, where plaintiff sought an injunction to prevent enforcement of the New York statute (*Chirillo* v. *Lehman*, 38 Fed. Supp. 65, decided December 31, 1940). The Federal District Court refused to look into the constitutionality of the statute on the ground that it had been conclusively determined as between these parties in the court of original jurisdiction in New York State, i. e. adversely to Chirillo, notwithstanding the dismissal of Chirillo's appeal by the New York Court of Appeals.

EXHIBIT 12.—*Collection of cases in the United States Supreme Court discussing the rights of a State with respect to paupers and persons likely to become a public charge*

The Mayor of New York v. *Miln*, 11 Peters 102, 36 U. S. 71 (1837)

A statute provided that the Master of a ship arriving in the port of New York from any country outside of the United States, or from any other of the United States, should report the name, age and occupation of each passenger (with a penalty for failure to comply), the intent of the statute being to protect the state from the influx of indigents. The statute was upheld as a proper exercise of the police power and as not being an unconstitutional regulation of Interstate Commerce. Mr. Justice Barbour for the majority said (pp. 141–2):

> "Now, in relation to the section in the act immediately before us, that is obviously passed with a view to prevent her citizens from being oppressed by the support of multitudes of poor persons, who come from foreign countries, without possessing the means of supporting themselves. There can be no mode in which the power to regulate internal police could be more appropriately exercised. New York, from her particular situation, is, perhaps, more than any other city in the Union, exposed to the evil of thousands of foreign emigrants arriving there, and the consequent danger of her citizens being subjected to a heavy charge in the maintenance of those who are poor. It is the duty of the state to protect its citizens from this evil; they have endeavored to do so, by passing amongst other things, the section of the law in question. We should, upon principle, say that it had a right to do so.
>
> "* * * We think it as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly, convicts; as it is to guard against the physical pestilence which may arise from unsound and infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease."

In the concurring opinion of Mr. Justice Thompson is found the following language (pp. 147–8):

> "* * * To test the present case by this rule. The duty here imposed arises, after the master and passengers have arrived within the limits of the state, and is applied to the purely internal concerns of the state. This provision does not affect other states, nor any subject necessary for the purpose of executing any of the general powers of the government of the Union. For although commerce, within the sense of the constitution, may mean intercourse, and the power to regulate it be coextensive with the subject on which it acts, and cannot be stopped at the external boundary of a state, according to the language of this court in the case of Brown v. State of Maryland, 12 Wheat. 446; it cannot be claimed, that the master, or the passengers, are exempted from any duty imposed by the laws of a state, after their arrival within its jurisdiction; or have a right to wander, uncontrolled, after they become mixed with the general population of the state; or that any greater rights or privileges attach to them, because they come in through the medium of navigation, than if they come by land from an adjoining state; and if the state had a right to guard against paupers becoming chargeable to the city, it would seem necessarily to follow, that it had the power to prescribe the means of ascertaining who they were, and a list of their names is indispensable to effect that object. The purposes intended to be answered by this law fall within that internal police of the state; which, throughout the whole case of Gibbons v. Ogden, is admitted to remain with the states." * * *
>
> "Can anything fall more directly within the police power and internal regulation of a state, than that which concerns the care and management of paupers or convicts, or any other class or description of persons that may be thrown into the country, and likely to endanger its safety, or become chargeable for their maintenance? It is not intended, by this remark, to cast any reproach upon foreigners who may arrive in this country. But if all power to guard against these mischiefs is taken away, the safety and welfare of the community may be very much endangered. * * *"

Mr. Justice Baldwin added (pp. 153b, 153 and 153n):

> "On the same principle by which a state may prevent the introduction of infected persons or goods, and articles dangerous to the persons or property of its citizens, it may exclude paupers who will add to the burdens of taxation, or convicts who will corrupt the morals of the people threatening them with more evils than gunpowder or disease. The whole subject is necessarily connected with the internal police of a state, no item of which has to any extent been delegated to congress, every branch of which has been excepted from the prohibitions on the states, and is, of course, included among their reserved powers.
>
> "If there is any one case to which the following remark of this court is peculiarly applicable, it is this: 'It does not appear to be a violent construction of the constitution, and is certainly a convenient one, to consider the

power of the states as existing over such cases as the laws of the Union may not reach.' 4 Wheat 195. Let this case be tested by this rule, and let it be shown, that any clause in the constitution empowers congress to pass a law which can reach the subject of pauperism, or the case of a pauper imported from a foreign nation or another state. They are not articles of merchandise or traffic, imports or exports. Congress cannot compel the states to receive and maintain them, nor establish a system of poor laws for their benefit or support; and there can be found in no decision of this court any color for the proposition, that they are in any respect placed under the regulation of the laws of the Union, or that the states have not plenary power over them." * * *

"No case can arise, in which the doctrine of construction has been attempted to be carried further than in this; the law of New York, on which this case turns, has but one object, the prevention of foreign paupers from becoming chargeable on the city or other parts of the state; it is a part of the system of internal police, prescribing laws in relation to paupers. The state asserts as a right of self-protection, the exclusion of foreigners who are attempted to be forced upon them, under the power of the laws for the regulation of commerce, which the defendant contends, protects all passengers from foreign countries, till they are landed, and puts it out of the power of the state to prevent it. On the same principle, convicts from abroad may be forced into the states without limitation; so, of paupers from other states, if once put in a vessel with a coasting license; so that all police regulations on these subjects by states must be held unconstitutional. One of two consequences must follow. There can be no poor-laws applicable to foreigners; they must be admitted into the state, and be supported by a tax on its citizens, or congress must take the subject into their own hands, as a means of carrying into execution their power to regulate commerce. Their laws must not be confined to the seaports in the states into which foregin paupers are introduced, they must extend to every part of the state to which paupers from other states can be brought; for the power to regulate commerce among the several states is as broad in all respects as to do it with foreign nations. * * * To my mind, there can be no such cause for discriminating between an imported and a domestic pauper; one is as much an article of commerce as another, and the same power which can force them into a state from a vessel, can do it from a wagon, and regulate their conveyance on the roads or canals of a state, as well as on its rivers, havens or arms of the sea. In following out these principles to their consequences, congress may, and, to be consistent, ought to go further. Poor laws are analogous to health, quarantine and inspection laws, all being parts of a system of internal police, to prevent the introduction of what is dangerous to the safety or health of the people; and health and quarantine laws extend to the vessel, the cargo and passengers. Laws excluding convicts and paupers are as necessary to preserve the morals of the people from corruption and their property from taxation, as any laws of the other description can be; nor do they interfere any further with the regulations of commerce; as laws in pari materia, they must stand or fall together, or some arbitrary unintelligible distinction must be made between them, which is neither to be found in the constitution, nor decisions of this court. If the principle on which health and quarantine laws are sustained, is applied to this case, the validity of the law in question is not to be doubted; if this principle is not so applied, then it is an unsound one, which must be abandoned, thereby the reserved powers of the states over their internal police, must devolve on congress, as an incident to, or the means of regulating 'commerce with foriegn nations' and 'among the several states.' There is no middle ground on which health and quarantine laws can be supported, which will not equally support poor laws; nor can poor laws be declared void on any ground that will not prostrate the others; all must be included within, or excepted from, the prohibition. * * * We should never have had a federal government, if there had been a declaration in its frame, that congress could pass poor-laws, or interfere to revise or control those passed by the states; or that congress could legislate on any subject of legislation over which no jurisdiction was granted to them, and which was reserved to the states or people, in the same plenitude as they held it before they surrendered any portion of their power. * * *

"I cannot think that it intended, or can be construed, to impose an unqualified prohibition on a state, to prevent the introduction of convicts or paupers, who are entitled to no higher protection than the vessel or goods on

> board; which are subject to state taxation with the assent of congress; and to health and inspection and quarantine laws, without their consent. * * * The law in question is confined to matters of police, it affects no regulations of commerce, it impairs no rights of any persons engaged in its pursuits; and while such laws are not extended beyond the legitimate objects of police, there is, in my opinion, no power, under the constitution, which can impair its force, or by which congress can assume any portion or part of this power, under any pretext whatever. * * *"

Even in the dissenting opinion of Mr. Justice Story he conceded (p. 155):

> "I admit, in the most unhesitating manner, that the states have a right to pass health laws and quarantine laws, and other police laws, not contravening the laws of congress rightfully passed under their constitutional authority. I admit, that they have a right to pass poor-laws, and laws to prevent the introduction of paupers into the state, under the like qualifications. I go further, and admit, that in the exercise of their legitimate authority over any particular subject, the states may generally use the same means which are used by congress, if these means are suitable to the end. But I cannot admit, that the states have authority to enact laws, which act upon subjects beyond their territorial limits, or within those limits and which trench upon the authority of congress in its power to regulate commerce."

Prigg v. *Pennsylvania,* 16 Peters 539, 41 U. S. 345.

The case involved the taking and returning to Maryland of a fugitive slave by an agent of the owner, a citizen of Maryland, contrary to a Pennsylvania statute prohibiting the taking and carrying away of Negroes for the purpose of slavery. In holding the statute void, the Court made clear its attitude on the limitation of State police power, as follows (p. 624):

> "* * * We entertain no doubt whatsoever, that the states, in virtue of their general police power, possess full jurisdiction to arrest and restrain runaway slaves, and remove them from their borders, and otherwise to secure themselves against their depredations and evil example, as they certainly may do in cases of idlers, vagabonds, and paupers. * * *"

License Cases—Thurlow v. *Massachusetts,* 5 Howard 504, 46 U. S. 590 (1847).

The statutes of Massachusetts, Rhode Island and New Hampshire, involving the right of states to license the sale of liquor, were upheld as not being inconsistent with any provision of the Constitution. Mr. Chief Justice Taney said (p. 576):

> "It has, indeed, been suggested, that, if a State deems the traffic in ardent spirits to be injurious to its citizens, and calculated to introduce immorality, vice, and pauperism into the State, it may constitutionally refuse to permit its importation, notwithstanding the laws of Congress; and that a State may do this upon the same principles that it may resist and prevent the introduction of disease, pestilence, or pauperism from abroad. But it must be remembered that disease, pestilence, and pauperism are not subjects of commerce, although sometimes among its attendant evils. They are not things to be regulated and trafficked in, but to be prevented, as far as human foresight or human means can guard against them. * * *"

Passenger Cases—Smith v. *Turner and Morris* v. *City of Boston,* 7 Howard 283, 48 U. S. 300 (1849)

The cities of New York and Boston imposed taxes upon alien passengers arriving in their ports. The court held both laws to be unconstitutional and void but in doing so Mr. Justice Wayne said (pp. 424, 5, 6):

> "The States have also reserved the police right to turn off from their territories paupers, vagabonds, and fugitives from justice. * * *"
>
> "* * * And when Congress shall legislate, if it be not disrespectful for one who is a member of the judiciary to suppose so absurd a thing of another department of the government,—to make paupers, vagabonds, suspected persons, and fugitives from justice subjects of admission into the United States, I do not doubt it will be found and declared, should it ever become a matter for judicial decision, that such persons are not within the regulating power which the United States have over commerce. * * * They have no rights of national intercourse; no one has a right to transport them, without authority of law, from where they are to any other place, and their only rights where they may be are such as the law gives to all men who have not altogether forfeited its protection.

> "The States may meet such persons upon their arrival in port, and may put them under all proper restraints. They may prevent them from entering their territories, may carry them out or drive them off. But can such a police power be rightfully exercised over those who are not paupers, vagabonds, or fugitives from justice? The international right of visitation forbids it."

And Mr. Chief Justice Taney in a dissenting opinion reasoned:

> "And the first inquiry is, whether, under the Constitution of the United States, the federal government has the power to compel the several states to receive, and suffer to remain in association with its citizens, every person or class of persons whom it may be the policy or pleasure of the United States to admit. In my judgment, this question lies at the foundation of the controversy in this case. I do not mean to say that the general government have, by treaty or act of Congress, required the State of Massachusetts to permit the aliens in question to land. I think there is no treaty or act of Congress which can justly be so construed. But it is not necessary to examine that question until we have first inquired whether Congress can lawfully exercise such a power, and whether the States are bound to submit to it. For if the people of the several States of this Union reserved to themselves the power of expelling from their borders any person, or class of persons, whom it might deem dangerous to its peace or likely to produce a physical or moral evil among its citizens, then any treaty or law of Congress invading this right, and authorizing the introduction of any person or description of persons against the consent of the State, would be an usurpation of power which this court could neither recognize nor enforce.
>
> * * * * * * *
>
> "If these cases are to stand, the right of the State is undoubted. And it is equally clear, that, if it may remove from among its citizens any person or description of persons whom it regards as injurious to their welfare, it follows that it may meet them at the threshold and prevent them from entering. * * * If the state has the power to determine whether the persons objected to shall remain in the State in association with its citizens, it must, as an incident inseparably connected with it, have the right also to determine who shall enter. * * * A concurrent and equal power in the United States and the States as to who should and who should not be permitted to reside in a State, would be a direct conflict of powers repugnant to each other, continually thwarting and defeating its exercise by either, and could result in nothing but disorder and confusion.
>
> "Again: if the State has the right to exclude from its borders any person or persons whom it may regard as dangerous to the safety of its citizens, it must necessarily have the right to decide when and towards whom this power is to be exercised according to the judgment of the party which possesses it. And it must, therefore rest with the State to determine whether any particular class of description of persons are likely to produce discontents or insurrection in its territory, or to taint the morals of its citizens, or to bring among them contagious diseases, or the evils and burdens of a numerous pauper population. For if the general government can in any respect, or by any form of legislation, control or restrain a State in the exercise of this power, or decide whther it has been exercised with proper discretion, and towards proper persons, and on proper occasions, then the real and substantial power would be in Congress, and not in the States. In the cases decided in this court, and herein above referred to, the power of determining who is or is not dangerous to the interests and well-being of the State has been uniformly admitted to reside in the State."

Henderson v. *The Mayor of the City of New York*, 92 U. S. 259 (1875)

The statute required a report by the master or owner of a vessel (as set out in *New York* v. *Miln*, *supra*) and also required the owner or consignee of every vessel arriving from a foreign port to give a bond to indemnify every city and county against any expense for relief or support of any person so brought in for a period of the next four years. The cost of the bond could be avoided by paying $1.50 per passenger within twenty-four hours of their arrival. The scheme was held to be a tax on the owner of a vessel for the privilege of landing passengers and the Court concluded that a tax on any passenger who comes from abroad was a strange means to the avowed end and purpose of the statute, namely, to prevent a flood of pauperism from Europe. Judgment for plaintiff city was reversed and the cause remanded, the Court concluding:

> "Whether, in the absence of such action, the States can, or how far they can, by appropriate legislation, protect themselves against *actual* paupers, vagrants, criminals, and diseased persons, arriving in their territory from foreign countries, we do not decide. The portions of the New York statute which concern persons who, on inspection, are found to belong to these classes, are not properly before us, because the relief sought is to the part of the statute applicable to all passengers alike, and is the only relief which can be given on this bill." (p. 275)

Chy Lung v. *Freeman*, 92 U. S. 275 (1875)

This case involving a California statute was decided immediately following the *Henderson case, supra*, the statute not requiring, however, a bond for every passenger or commutation in money but only for certain enumerated classes, including "lewd and debauched women". The plaintiff was placed in this class by the Commissioner of Immigration on her arrival from China and imprisoned. The master of the vessel refused to pay the bond indemnifying cities and counties in the event relief became necessary for her. The Court declared the statute was unconstitutional and void because it went far beyond what was necessary to achieve its avowed purpose and because it was actually designed not for obtaining an indemnity but rather to compel the payment of money by masters of vessels in commutation to escape the placing of the bonds. The Court says:

> "We are not called upon by this statute to decide for or against the right of a State, in the absence of legislation by Congress, to protect herself by necessary and proper laws against paupers and convicted criminals from abroad; nor to lay down the definite limit of such right, if it exist. Such a right can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity. When a State statute, limited to provisions necessary and appropriate to that object alone, shall, in a proper controversy, come before us, it will be time enough to decide that question. * * *." (p. 280)

Railroad Company v. *Husen*, 95 U. S. 465 at 470 (1877)

> "* * * In *Henderson* v. *The Mayor, &c.*, the statute of New York was defended as a police regulation to protect the State against the influx of foreign paupers; but it was held to be unconstitutional, because its practical result was to impose a burden upon all passengers from foreign countries. And it was laid down that, 'in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect.' The reach of the statute was far beyond its professed object, and far into the realm which is within the exclusive jurisdiction of Congress. So in the case of *Chy Lung* v. *Freeman*, where the pretense was the exclusion of lewd women; but as the statute was more far-reaching, and affected other immigrants, not of any class which the State could lawfully exclude, we held it unconstitutional. Neither of these cases denied the right of a State to protect herself against paupers, convicted criminals, or lewd women, by necessary and proper laws, in the absence of legislation by Congress, but it was ruled that the right could only arise from vital necessity, and that it could not be carried beyond the scope of that necessity. These cases, it is true, speak only of laws affecting the entrance of persons into a State; but the constitutional doctrines they maintain are equally applicable to inter-state transportation of property. * * *." (pp. 472, 3)

Plumley v. *Massachusetts*, 155 U. S. 461 (1894)

In upholding a Massachusetts statute forbidding the bringing in and sale of oleomargarine for butter, the court said: (p. 478)

> "It has therefore been adjudged that the states may legislate to prevent the spread of crime, and may exclude from their limits paupers, convicts, persons likely to become a public charge, and persons afflicted with contagious or infectious diseases. These and other like things having immediate connection with the health, morals, and safety of the people, may be done by the states in the exercise of self defense * * *."

Missouri, Kansas & Texas RR. Co. v. *Haber*, 169 U. S. 613, 629 (1897)

In discussing the statute of Kansas prohibiting the bringing in of cattle likely to be diseased and making a person so doing liable in damages in a civil action, the court states that in *Railroad Co.* v. *Husen*, 95 U. S. 465, 471, 473:

> "The court cited with approval the language of the Supreme Court of Vermont in Thorpe v. Rutland & Burlington R. R. 27 Vt. 140, * * *
>
> "Under that power the court said, that while a state by legislation may not invade the domain of the National Government, it may *exclude* from its limits convicts, paupers, idiots and lunatics, persons likely to become a public charge, as well as persons affected by contagious or infectious diseases. * * * Such exertions of power by a state, it was said, were self-defensive."

Japanese Immigrant Case—Kaoru Yamataya v. *Fisher*, 189 U. S. 86 (1902)

The Immigration Act of 1901 provided for the exclusion of paupers among others and the immigration authorities refused, therefore, to permit the plaintiff Japanese citizen to enter. Plaintiff contended that under the treaty with Japan, all Japanese citizens had full liberty to enter, travel or reside within the United States, but the Act was upheld as a proper exercise of the police power, the operation of which was expressly excepted from the effect of any of the provisions of the treaty, the Court stating:

> "A statute excluding paupers or persons likely to become a public charge is manifestly one of police and public security." (p. 97)

Federal Cases.

In re Ah Fong, 1 Fed. Cases 213, 3 Sawyer 144, Fed. Case 102 (Circuit Court, Dist. of California) (1874)

> "It is equally true that the police power of the state may be exercised by precautionary measures against the increase of crime or pauperism, or the spread of infectious diseases from persons coming from other countries; that the state may entirely exclude convicts, lepers, persons afflicted with incurable disease; may refuse admission to paupers, idiots, lunatics and others, who from physical causes are likely to become a charge upon the public until security is afforded that they will not become such a charge; and may isolate the temporarily diseased until the danger of contagion is gone. The legality of precautionary measures of this kind has never been doubted. The right of the state in this respect has its foundation, as observed by Mr. Justice Grier in the *Passenger Cases*, 7 How. (48 U. S.) 462, in the sacred law of self defense, which no power granted to Congress can restrain or annul."

Sweeney v. *State Board of Public Assistance*, District Court of Pa., 36 Fed. Supp. 171, Dec. 31, 1940

This very recent case indicates a contemporary view of the Federal Courts as to the degree of limitation a state may require on the right to live in a specific locality as a condition to relief without infringing on an individual's constitutional rights.

> "Plaintiffs claim that their right to live where they please has been infringed by this regulation of the State Board of Public Assistance, which denied them relief while living as a family unit with relatives who are not legally liable for their support. The courts have construed the fourteenth amendment of the Federal Constitution to guarantee to an individual the right to live where, and as he pleases: *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589, 17 S. Ct. 427, 41 L. Ed. 832, but the amendment is not a guaranty of untrammeled freedom of action: *Virginia R. Co.* v. *System Federation No. 40*, 300 U. S. 515, 57 S. Ct. 592, 81 L. Ed. 789. The Constitution does not recognize an absolute and uncontrollable liberty, the liberty safeguarded being liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people; (Citations) The constitutional guaranty of liberty is only of freedom from arbitrary restraint, not of immunity from reasonable regulations and prohibitions imposed in the interests of the community. (Citations) There is no arbitrary restraint here of plaintiffs' right to live where they please. The restraint is imposed only if they wish to receive a grant of public assistance from the state."

Exhibit 13.—*Collection of Cases Discussing the Term "Indigent", et Cetera*

Board of Directors v. *Nye*, 8 Cal. App. 527, 97 Pac. 208 (1908)

In discussing whether or not the State could appropriate funds in support of an institution for widows of Civil War Veterans the Court, at page 536, gave this indication of its definition of "paupers":

> "As a matter of course, no one will dispute the proposition that the support of paupers and the giving of assistance to those who by reason of age, infirmity, or disability, or inability for any reason to take care of themselves, might become such, is, by the practice and common consent of civilized countries, a public purpose, and within the general legislative power."

Storrs Agricultural School v. *Whitney*, 54 Conn. 342, 8 Atl. 141 (1887)

In discussing whether a charitable gift "to aid indigent young men" of a town in fitting themselves for the evangelical ministry was void for uncertainty, the Court held:

> "Neither of the words 'indigent' nor 'evangelical' is of rare use or hidden meaning. They are quite within ordinary intelligence, and point with a sufficient degree of certainty to the individual to enable the statute of charitable uses to distinguish him from all others. It is a sufficiently accurate statement, in this connection, to say that they describe a man who is without sufficient means of his own, and whom no person is bound and able to supply, to enable him to prepare himself for preaching the gospel. * * *." (p. 146)

Juneau County v. *Wood County*, 109 Wisc. 330, 85 N. W. 387 (1901)

An action brought by one county against another "for the support of a pauper and his family" under a statute extending aid to "poor and indigent persons".

> "* * * It will be observed that, to entitle any person to such relief, he must be 'needy' or 'indigent.' The language is similar to the statutes for the 'relief and support of the poor,' where, with certain exceptions, relief and support are only to be given to 'poor and indigent persons' who 'shall stand in need thereof.' 'Poor Persons,' sections 1499–1516, Rev. St. 1898. As stated by Mr. Justice Pinney: 'The word "poor" in the statute has a restricted and technical meaning, and it is practically synonymous with "destitute," denoting extreme want and helplessness.' Town of Rhine v. City of Sheboygan, 82 Wis. 354, 52 N. W. 444; Town of Ettrick v. Town of Bangor, 84 Wis. 259, 54 N. W. 401; Wisconsin Keeley Institute Co. v. Milwaukee Co., 95 Wis. 158, 70 N. W. 68, 36 L. R. A. 55. Webster defines the word 'indigent' as a person 'destitute of property or means of comfortable subsistence; needy; poor.' Other dictionaries define it in substantially the same way. So Webster defines 'needy' as a person 'distressed by want of the means of living; very poor; indigent; necessitous.' Others give similar definitions. * * *." (p. 388)

Oteo County v. *Lancaster County*, 78 Neb. 517, 111 N. W. 132 (1907)

Action by one county against another for expenditures occasioned by the support of an "alleged pauper". On interpreting the term "poor person" in statutes providing for their support the Court held:

> "The term 'poor person,' as used in this section, is the equivalent of pauper, and includes all persons without means, who are unable on account of some bodily or mental infirmity, or other unavoidable cause, to provide for themselves. It may be said, therefore, that a person is chargeable as a pauper, under our statute, when he is without means, and unable, on account of some bodily or mental infirmity, or other unavoidable cause, to earn a livelihood, and has no kindred in the state liable under the statute for his support, or whose kindred within the state are of insufficient ability, or fail or refuse, to maintain him." (p. 133)

State v. *Sharp*, 1 W. W. Harr, Del. 148, 111 Atl. 909 (1920).

> " 'Any husband who shall, without just cause, desert and willfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances * * * shall be guilty of a misdemeanor.' (Rev. Code 1915, p. 1421, sec. 3034.)"

> " 'A wife is in necessitous circumstances * * * when she does not have property or money available for such necessities or ordinary comforts of life as her husband can reasonably furnish. * * *
>
> " 'The essence of the act is that a man shall not be allowed to shift the burden of supporting his wife * * * upon others under no obligation to bear it. * * * Therefore, whenever a husband, without just cause, neglects or refuses to provide for the support and maintenance of his wife and thereby places her in such a situation that she stands in need of the necessaries of life, it is not material that they are supplied by her own labor or by sympathizing relatives, friends, or strangers, so that she does not in fact suffer from privation. He is guilty if he leaves her in such circumstances that, without her own efforts or outside help, she would lack the necessaries of life.'
>
> "*Donaghy* v. *State*, 6 Boyce, 467, 100 Atl. 696." (pp. 910–11)

Allegheny County v. *City of Pittsburgh*, 281 Pa. 300, 127 Atl. 72 (1924)

Under a statute providing a recovery of money expended for neglected and dependent children, a distinction was drawn between this class of individuals and "poor persons", for which latter class the poor laws are applicable, and the term, for the purpose, defined as follows:

> "The term 'poor' is used in the law, means 'destitute'; helpless and in extreme want; * * * so completely destitute of property as to require assistance from the public; it is synonymous with 'pauper' and this means 'one so poor that he must be supported at the public expense.' "

Busser v. *Snyder*, 282 Penn. State 440, 128 Atl. 80, 37 A. L. R. 1515 (1925)

In discussing the Old Age Pension Law of Pennsylvania, the Court held:

> " 'Poor persons' and 'paupers' have been used as synonymous words, although not necessarily meaning the same; but the thing which for more than 200 years fixed the charge on the commonwealth was the fact of inability to support themselves and without means of support. * * * When the Constitution was adopted, the terms 'poor laws' and 'poor persons' were well understood. These speak of 'poor persons not able to work' or 'by reason of age, disease, infirmity, or other disability are unable to work', 'the needy sick and indigent', 'without means of support,' to which the Poor Authorities were required to give aid * * *. The term 'poor' as used by law makers describes those who are destitute and helpless, unable to support themselves, and without means of support. These are objects of public charity. * * *"

Town of Maulius v. *Town of Pompey*, 140 Misc. Rep. 505, 250 N. Y. S. 690 (1930)

An action brought by one town against another to recover the sum paid out for the support of poor persons properly chargeable to defendant-town. The Court stated:

> "It is common knowledge who the ordinary 'poor persons' are. They are those without property, without habits of industry or thrift, improvident, usually physically or mentally deficient, who are unable through efforts of their own to gain a livelihood. They are constantly seeking and generally receive at some regular intervals public charity or assistance; they have a practically constant status as 'poor persons'; they are not able to maintain themselves for any long period of time even under ordinary conditions."

Moss v. *Moss*, 163 Washington 444, 1 Pac. (2) 916 (1931)

An action for contribution from a divorced husband for expenditures made by the wife in caring for the disabled son of the parties. Under a statute requiring relatives to support "poor persons". The definition given was as follows:

> "The term 'poor' person as used in our statute means such person who is so completely destitute as to require assistance from the public. It refers to a person who is so helpless by reason of physical or mental infirmity as to be dependent for his support upon public charity; that such person is unable to provide for and maintain himself.
>
> 'Generally the terms "pauper" and "poor person", "indigent person", "person in distress", etc., in statutes providing for the relief of such persons, are used to describe that class of persons who are so destitute and helpless as to be dependent for their support on public charity.' "

Cloyd v. *County of Vermilion*, 360 Ill. 610, 196 N. E. 802 (1935)

In a suit brought by a physician against defendant-county for the value of services he had rendered to two individuals under a statute, the county claimed that, since the title of the act was limited to "paupers" and the act dealt with persons who were not paupers but merely unable to support themselves or pay for medical and surgical aid when ill, the act was unconstitutional, but in giving judgment for the plaintiff the Court disagreed with the defendant-county as follows:

> "Webster's International Dictionary defines a pauper as a very poor person; a person destitute of means except such as are derived from charity; one who receives aid from public poor funds. Those mentioned in section 24 who are unable to pay for nursing, medical expenses, or their burial expenses if they die are certainly included in the commonly understood meaning of the word 'pauper', even though they may not be paupers in the technical, legal definition of the word. In such emergency, they must receive aid from the public poor funds or from charity.' (p. 804)

Exhibit No. 9.

In the Supreme Court of the United States. October Term, 1941. No. 17. *Fred F. Edwards, Appelant*, vs. *The People of the State of California, Appellee and Respondent.* Earl Warren, Attorney General of the State of California; W. T. Sweigert, Assistant Attorney General of the State of California; Hiram W. Johnson, 3rd, Deputy Attorney General of the State of California; 600 State Building, San Francisco, California; Attorneys for Appellee.

SUPPLEMENTAL POINTS AND AUTHORITIES FILED BY THE ATTORNEY GENERAL OF CALIFORNIA

Pursuant to permission of the Court granted at the oral argument, we present the following points and authorities which do not appear in the Brief or Supplement heretofore filed by the Attorney General.

1. In connection with the discussion in our brief, "Conclusions re Interpretation of Welfare and Institutions Code, Sec. 2615", pp. 25–31, we add the following points and authorities:

(*a*) *Fitchburg* vs. *Cheshire Ry. Co. 110 Mass. 210* (*1872*), involving application of a similar statute to a common carrier, and construing the statute as applicable to those who have some agency in inducing the poor person to come into the state, i. e. by whose procurement or instigation the person is induced to come, and, hence, not applicable to a carrier bringing such person into the state without knowledge of the condition and in the ordinary course of business.

Thomas vs. *Ross & Shaw, 8 Wend.* (*N. Y.*) *872* (*1832*), involving a similar statute, and pointing out that a poor person may be carried very innocently by carriers, without incurring the penalty, and that, although carriers are within the letter of the statute, they are not within its spirit, unless their intent be against the spirit of the poor laws.

(*b*) The contention at pp. 22–23 of the Amicus Curiae brief to the effect that a carrier is charged at its peril with knowledge of the indigency of those whom it carries is obviously based upon a misconstruction of *State* v. *Cornish*, 21 Atlantic 180, (1890)—(Our supplement p. 117), wherein the court used the quoted language only with respect to the contention of the defendant that he did not know the indigent's place of settlement, knowledge of the indigency by the defendant being required by the statute and found to exist in the case.

2. In connection with the discussion in our brief of the due process clause of the Fourteenth Amendment (pp. 37–39), we add the following points and authorities:

(*a*) The term "indigent" in this criminal statute is not too uncertain or indefinite for use in a criminal statute. It is well within the rules declared in the following decisions:

Nash v. *United States*, 229 U. S. 373, 377.
Omaechevarria v. *Idaho*, 246 U. S. 343, 348 (1917).
Mahler v. *Edy*, 264 U. S. 32.40 (1923).
Hygrade Provision Co. v. *Sherman*, 266 U. S. 497, 501–503 (1924).
Gorin v. *United States*, 61 Supreme Court Reports 429, 433–434 (1941).
United States v. *Henderson*, 121 Federal (2nd) 75, 76–78 (1941).
In re Hugh McCue, 7 Cal. App. 765, 96 Pacific 110 (1908).
Pacific Coast Dairy v. *Police Court*, 214 Cal. 668, 8 Pacific (2nd) 140 (1932).
In re Cutler, 1 Cal. App. (2nd) 373, 36 Pacific (2nd) 441 (1934).

(*b*) There is no basis in the statute for the contention in the Amicus Curiae brief (pp. 24–5) that arbitrary power of inquisition, examination or exclusion is vested in administrative officers of the state or of any carrier. This is merely a criminal statute, and the offense denounced is not even completed until the indigent has actually been brought into the state, and the rights of the defendant are protected by the privilege of jury trial.

This is not within the rule of *Yick Woo* v. *Hopkins*, 118 U. S. 356 (1885) or *Gegiow* v. *Uhl*, 239 U. S. 3 (1915), nor is it within *Truax* v. *Raich*, 239 U. S. 3, 33 (1915), where the statutory test was merely nationality.

3. In connection with the discussion in our brief of the commerce clause (pp. 39–48) we add:

(*a*) *Williams* v. *Fears*, 179 U. S. 270, 275–276 (1900), particularly the court's view that the conduct of persons engaged in hiring persons within the state for employment outside the state was a proper subject of police power, and that the state could properly discriminate in respect to groups whose conduct tended to induce the laboring population to leave the state or to remain in the state, and that such statute, if it could be said to affect freedom of egress from the state, or freedom of contract, did so only incidently and remotely. We believe that striking analogy exists in respect to the class of persons in California whose conduct in bringing destitute or indigent persons into the state, wilfully and without bond of legal support as to such persons, tends to stimulate and induce the influx of such persons into the state beyond the normal course of immigration.

(*b*) We also add to our reference in our brief to existing federal alien exclusion laws, further reference to pending legislation in Congress on the subject of interstate migration of indigents, H. R. 161, 77th Congress, 1st Session, wherein the basic term is "needy transients" (needy not being defined in the bill) and wherein (p. 3, lines 15–26) provision is made for requirement by the Social Security Board for the return to the state of legal settlement of any transient who was receiving public assistance at the time of his departure from his state of legal settlement.

Respectfully submitted.

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Exhibit No. 10.

Supreme Court of the United States. October Term, 1941. No. 17. *Fred F. Edwards, Appellant*, vs. *The People of the State of California.* John H. Tolan, as Amicus Curiae. Irwin W. Silverman, Washington, D. C. of Counsel

BRIEF OF JOHN H. TOLAN, FOR THE SELECT COMMITTEE OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, APPOINTED PURSUANT TO HOUSE RESOLUTION NO. 63, APRIL 22, 1940, TO INVESTIGATE INTERSTATE MIGRATION OF DESTITUTE CITIZENS, AS AMICUS CURIAE

Preliminary Statement

The statute[1] in question enacted by the State of California, typical of the anti-migratory statutes enacted in twenty-eight States—the text and analysis of which are contained in the Supplement to this brief—provides: "Every person, firm, or corporation, or officer or agent thereof that brings or assists in bringing into the state any *indigent* person, who is not a resident of the state, knowing him to be an *indigent* person, is guilty of a misdemeanor."

This enactment is based on an earlier law,[2] amended in 1931,[3] which reads: "Every person, firm or corporation bringing into or leaving within, or procuring the bringing into or the leaving within, or aiding in the bringing into or leaving within of any *pauper* or *poor* or *indigent* or incapacitated or incompetent person * * * knowing him to be such *pauper*, *poor* or *indigent*, or incapacitated or incompetent person, shall be guilty of a misdemeanor."[4]

As authority for the proposition that a State under its police powers may exclude *paupers* from its boundaries, Counsel for appellee and respondent in this case, arguing for the validity of the statute in question submits the case of *The Mayor of New York* v. *Miln*, 11 Pet. 102 (1837).[5] Counsel also contends:[6]

> "It is unfortunate that Section 2 of the statute [involved in the *Miln* case] which provided that the master of the vessel should be bound in sureties in a sum not to exceed $300.00 for every passenger in order that the city be saved harmless from the possible maintennce of such persons was not actually passed upon. It was not counted upon in the original declaration which was demurred to and certified to the Circuit Court and finally before the Supreme Court. Section 2 of the New York statute was clearly anti-pauper legislation, and although Justice Barbour's opinion seems to consider the fact as a whole, nevertheless, Section 1 which merely required *the report of the master as to all his passengers was the only section actually before the Court*, and the consideration of which was necessary to the decision. Hence, what, but for a limited certification would have been a direct holding on the right of a State to exclude *paupers* under its police power is relegated to the status of very strong dictum. *We urge that in view of the unequivocal opinion of the Court in the Miln case* there can be little doubt that had the last mentioned issue been squarely before the Court its validity would likewise have been favorably passed upon."

On page six of the said brief, Counsel continues:

> "Following the *Miln* case the Supreme Court on numerous occasions reiterated the right of a state in the exercise of its police power to exclude *paupers* from its limits."

For this proposition, Counsel cites: "Hannibal & St. Joseph *R. R. Co.* v. *Husen* (1878), 95 U. S. 465, 24 L. Ed. 527; In re Ah Fong (1874), 3 Saw, 144, 1 Fed. Cases 213; Henderson *v.* Wickham (1875), 92 U. S. 259, 23 L. Ed. 543; Chy Lung *v.* Freeman (1876), 92 U. S. 275, 23 L. Ed. 550; *Passenger Cases*, supra, 7 How. 283; *Plumly v. Mass.* (1894), 155 U. S. 461; *Missouri K. and T. Ry. v. Haber* (1898), 169 U. S. 613."[7]

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[1] Cal. Welfare and Institutions Code (Deering, 1937), sec. 2615.

[2] Cal. Stats. (1901), c. 210, sec. 3.

[3] Cal. Gen. L. (Deering, 1931), act 5814, sec. 3.

[4] The principal difference between the two statutes being that the words, "*pauper* or *poor* or *indigent* or incapacitated or incompetent person" have been deleted from the earlier enactment. In their stead has been substituted the sole term, "indigent". Whether the term "indigent" was intended by the legislature as covering the other classes of persons cannot be determined. Also, what the definition of "indigent" may mean cannot be determined, as the term has never been legally defined.

[5] See brief of counsel for appellee and respondent, dated April 21, 1941, p. 3.

[6] Ibid., p. 5. Italics supplied.

[7] Ibid., p. 6.

Let us first briefly consider each of the cases in light of Counsel's contention:

First, in the *Henderson* case,[8] Justice Miller, delivering the opinion for the Court, argued that the *Miln* case was strictly limited to the proposition that requiring a report of the master of a ship as to all of his passengers, *without more*, fell withint the police powers of the States and was not in conflict with the Federal Constitution. But, continues Justice Miller:

> "From this decision Mr. Justice Story dissented, and in his opinion stated that Chief Justice Marshall, who had died between the first and second argument of the case, fully concurred with him in the view that the statute of New York was void, because it was a regulation of commerce forbidden to the States." [9]

Nevertheless, in spite of the strong dissent, this was held to be the law until the *Passenger Cases*, reported in *7 How. 283*, came before this Court for consideration, involving the section of the statute not passed upon in the *Miln* case. This section of the statute authorized the health commissioner to demand, and if not paid, to sue for and recover, from the master of every vessel arriving in the port of New York from a foreign port one dollar and fifty cents for each cabin passenger, and one dollar for each steerage passenger.

The defendant, Smith in that case, who was sued for the sum of two hundred ninety-five dollars for refusing to pay for two hundred ninety-five steerage passengers, demurred to the declaration on the ground that the act was contrary to the Constitution of the United States and, therefore, void. It was held in that case, at the January term, 1849, Justice Miller continues: " 'that the statute was repugnant to the Constitution and laws of the United States and therefore void.' 7 How. 572." [10]

Immediately after this decision the State of New York amended the statute on that subject with a view, no doubt, to avoid the constitutional objection. And, in declaring this statute, as amended, *containing provisions similar to those upheld in the Miln case, invalid*, Justice Miller concludes:

> "We are of opinion that this whole subject has been confided to Congress by the Constitution; that Congress can more appropriately and with more acceptance exercise it than any other body known to our law, state or national; that by providing a system of laws in these matters, applicable to all ports and to all vessels, a serious question, which has long been matter of contest and complaint, may be effectually and satisfactorily settled.
>
> "Whether, in the absence of such action the States can or how far they can, by appropriate legislation, protect themselves against actual paupers, vagrants, criminals and diseased persons arriving in their territory from foreign countries, *we do not decide*." [11]

The holdings both in this and the *Passenger Cases* are far from that which Counsel for appellee contends, to wit: "Hence, what, but for a limited certification, would have been a direct holding on the right of a State to exclude paupers under its police power is relegated to the status of very strong dictum. We urge that in view of the unequivocal opinion of the Court in the *Miln* case, there can be little doubt that had the last mentioned issue been squarely before the Court, its validity would likewise have been favorably passed upon." [12]

As to the *Chy Lung* case,[13] also cited by Counsel for the proposition that a State in the exercise of its police power may exclude paupers from its limits, Justice Miller, again delivering the opinion for the Court, says:

> "It is a most extraordinary statute. It provides that the Commissioner of Immigration is 'to satisfy himself whether or not any passgngers who shall arrive in the State by vessels from any foreign port or place (who is not a citizen of the United States) is lunatic, idiotic, deaf, dumb, blind, crippled, or infirm, and is not accompanied by relatives who are able and willing to support him, or is likely to become a public charge, or has been a *pauper* in any other country, or is from sickness or disease (existing either at the time of sailing from the port of departure or at the time of his arrival in the State) a public charge, or likely soon to become so, or is a convict,

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[8] 92 U. S. 259, 266 (1875).

[9] Ibid.

[10] Ibid., p. 267.

[11] Ibid., pp. 274, 275.

[12] Counsel's brief, *supra*, p. 5.

[13] 92 U. S. 275, 277 (1875).

> criminal, or a lewd or debauched woman; and no such person shall be permitted to land from the vessel, unless the master or owner or a consignee shall give a separate bond in each case, conditioned to save harmless every county, etc. * * *
>
> "It is hardly possible to conceive a statute more skillfully framed to place in the hands of a single man the power to prevent entirely vessels engaged in a foreign trade * * * to compel them to submit to systematic extortion of the grossest kind.
>
> "The Commissioner has but to go aboard a vessel filled with passengers ignorant of our language and our laws, and without trial or hearing or evidence, but from the external appearance of persons with whose former habits he is unfamiliar, to point with his finger to twenty, as in this case, or a hundred if he chooses, and say to the master, 'These are idiots, these are *paupers*, these are convicted criminals, these are lewd women and these others are debauched women. I have here a hundred blank forms of bonds, printed. I require you to fill me up and sign each of these for $500 in gold, and that you furnish me two hundred men, residents of this State, and of sufficient means as sureties on these bonds. I charge you $5.00 in each case for preparing the bond and swearing your sureties; and I charge you seventy-five cents each for examining these passengers and all others you have on board. If you don't do this you are forbidden to land your passengers under a heavy penalty. But I have the power to commute with you for all this for any sum I may choose to take in cash. I am open to an offer; for you must remember that twenty per cent of all I can get out of you goes into my own pocket, and the remainder into the treasury of California." [14]

Justice Miller then concludes: "In any view which we can take of this statute, it is in conflict with the Constitution of the United States and therefore void." [15]

The *Husen* case,[16] cited by Counsel, involved a Missouri statute dealing not with paupers, but with the importation of "Texas, Mexican or Indian Cattle." In declaring this Act invalid, the Court said:

> "* * * While we unhesitatingly admit that a State may pass sanitary laws and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc. from entering the State; while for the purpose of self-protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the State, *beyond what is absolutely necessary for its self-protection.* It may not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce * * *" [17]
>
> "Tried by this rule, the statute of Missouri is a plain intrusion upon the exclusive domain of Congress. It is not a quarantine law. It is not an inspection law. It says says to all natural persons and to all transportation companies, 'You shall not bring into the State any Texas cattle or any Mexican cattle or Indian cattle, between March 1 and Dec. 1 in any year, no matter whether they are free from disease or not, no matter whether they may do an injury to the inhabitants of the State or not; and if you do bring them in, even for the purpose of carrying them through the State without unloading them, you shall be subject to extraordinary liabilities.' Such a statute, we do not doubt, it is beyond the power of a State to enact. To hold otherwise would be to ignore one of the leading objects which the Constitution of the United States was designed to secure." [18]

This holding was also cited by Counsel for the proposition that a State under its police power may exclude *paupers* from coming within its limits. And, as to the remaining cases cited by Counsel for this proposition, The *Plumly* case [19] deals with the sale of oleomargarine, which, of course, is not in point; the *Haber* case [20] deals with a Kansas statute, prohibiting the importation of diseased cattle; it, too, has no bearing on the proposition that a state may exclude *paupers*. And as to the *Ah Fong* case,[21] the Court, in holding the California Chinese Exclusion Act invalid, said: "I am aware of the very general feeling prevailing in the State against the Chinese, and in opposition to the extension of any encouragement to their immigration hither * * * *Admitting that there is ground for this feeling, it does not justify any legislation for their exclusion* * * * It follows, from the views just expressed, that the petitioner must be discharged from further restraint of her liberty; and it is so ordered."

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[14] Ibid., p. 278.

[15] Ibid., p. 281.

[16] *Railroad Co.* v. *Husen*, 95 U. S. 465 (1877).

[17] Ibid., p. 472.

[18] Ibid., p. 473.

[19] *Plumly* v. *Massachusetts*, 155 U. S. 461 (1894).

[20] *Missouri K. & T. Ry* v. *Haber*, 169 U. S. 613 (1898).

[21] *In re Ah Fong*, 1 Fed. Cases 213, 217, 218 (1874).

Thus, case for case cited, the holdings of each can hardly be reconciled with Counsel's contention: "Following the *Miln* case the Supreme Court on numerous occasions reiterated the right of a State in the exercise of its police power to exclude *paupers* from its limits." [22]

True, the only case of some support to appellee's cause is the *Miln* case. However, that case, if not directly, was impliedly overruled by the *Henderson* case, *supra.* This Court has never squarely passed upon the question as to whether a State, may, in the exercise of its police power, exclude paupers from its limits. There is, however, ample authority in the State courts to the effect that a State may prevent persons who are lunatics, idiots, vagrants, aged, or infirm, and who are without any visible means of support from coming within its limits.[23] But, unfortunately, in most of these cases, the decisions do not turn on whether these persons are *paupers* or *indigents*, but rather on the question of a particular locality's support or non-support of these people. In each of these cases, exclusion is narrowly limited to those who are physically or mentally handicapped and without some means of support; and, in no case has this doctrine been expanded to include persons who are not imbecilic, who are not drunkards, who are not vagrants or tramps; who are not diseased, who are not aged or infirm, nor as to persons who have always worked, persons who are willing to work, persons who are able to work and who are competent in every other respect, except that they are temporarily without work and without funds.

Although many cases can be cited for the broad and vague doctrine of exclusion, no single decision can be cited for the proposition *that a pauper is a person who is without funds or means of support, and no more;* and, in each case all through the ages, there has always been a traditionally close association in the application of the term *pauper* with persons who are permanently disabled and without some means of support.

The Supreme Court of Nebraska [24] defined *pauper* as a person who is unable to earn a livelihood in consequence of any bodily infirmity, *and* who is without means, and who is without kindred of sufficient means to support him. In Washington,[25] a *poor person* or *pauper* was held to be a person without means of support or destitute and dependent on charity, but not necessarily one merely without financial resources.[26] And, Iowa, the only State defining the term by statute [Ia. Code (1939), sec. 3828.073], construes "poor persons" to be those "who have no property, exempt or otherwise, and are unable, because of physical or mental disabilities, to earn a living by labor."

Although the discussion, thus far, has been confined to the question of excluding *paupers*, we have done so purposely, since Counsel for appellee significantly bases his contention solely on that proposition, to wit: "We submit that this right of States to protect themselves against the influx of *paupers* is one of the inherent rights of a State not delegated by the Constitution or any amendment thereof." [27] Throughout all of his discussion, Counsel avoids the use of the term *indigent*, even though by amendment, the State of California dropped from the earlier enactment on this subject the terms "*pauper* or *poor* or *indigent* or *incapacitated* or *incompetent person*", and has substituted for these terms the single word, *indigent.*

This change gives rise to many questions. Why has the California State Legislature amended the statute, similar in every other respect to the earlier law, except that the controlling language pertaining to the classes of persons prohibited from being brought into the State, in the new law, is less definite and more obscure? Is *indigent* alone to be used to describe all of the persons enumerated in the earlier statute? Is this term to be used interchangeably with *pauper* and the others? Can this term be indiscriminately applied to all persons the State may desire to brand as "undesirables"? Thus, can California or any other State preclude *indigents* from coming within its limits, for without defining so vague and indefinite a term, the State imposes the duty and burden upon persons bringing others into the State to determine whether persons so brought are or are not *indigent*?

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[22] Counsel's brief, *supra*, p. 6.

[23] *Sullivan County* v. *Grafton County*, 55 N. H. 339 (1875); *The Town of Barnet* v. *John Ray and Henry Walker*,. 33 Vt. 205 (1860); *Town of Stratford* v. *Sanford*, 9 Conn. 275 (1832); *Inhabitants of Palmer* v. *Horace P., Wakefield*, 102 Mass. 214 (1869); *The Inhabitants of Sturbridge* v. *Jonathan Winslow*, 38 Mass. 83 (1838); *State* v. *Cornish*, 66 N. H. 329 (1890).

[24] *Muller* v. *Banner County*, 127 Neb. 690, 256 N. W. 639 (1934).

[25] *Spokane County* v. *Arvin*, 169 Wash. 349, 13 Pac. (2d) 1089, 1090 (1932).

[26] See also: *Citizens and Southern Natl. Bank* v. *Cook*, 182 Ga. 240, 185 S. E. 318 (1936); *In re Barnes*, 119 Pa. Super. 533, 180 Atl. 718 (1935); *Symes Arlington Hospital* v. *Town of Arlington*, 292 Mass. 162, 197 N. E. 677 (1935); *Brown* v. *Van Keuren*, 340 Ill. 118, 172 N. E. 1 (1930); *Allegheny County* v. *Pittsburgh*, 281 Pa. 300, 127 Atl. 72 (1924); *Newark Township* v. *Kearny*, 99 Neb. 42, 155 N. W. 797 (1915); *Weeks* v. *Mansfield*, 84 Conn. 544, 80 Atl. 784 (1911); *Holburn* v. *Pfanmiller's Admr.*, 114 Ky. 831, 71 S. W. 940 (1903); *In re Hoffen's Estate*, 70 Wis. 522. 36 N. W. 407 (1888); *Walbridge* v. *Walbridge*, 46 Vt. 617 (1874); *City of Charlestown* v *Inhabitants of Groveland*, 81 Mass. 15 (1860); *Hutchings* v. *Thompson*, 64 Mass. 238 (1852).

[27] Brief for appellee, p. 2.

However, in spite of the difficulties that may arise with respect to the interpretation of any of these terms, we contend that both the old and the new statutes are equally indefinite and obscure; and, further contend that it is not now for this Court to decide who is or is not a *pauper* or *indigent.* In fact, any further attempt to pursue this discussion revolving around the definition of such vague and ambiguous terms would only tend to clog and confuse the more important aspects of the questions presented by this case to this Court for determination. Unless it be possible to define *beyond all doubt* and in terms so clear as not to be subject to controversy, varying interpretations and dispute, any course by this Court, any other court or any legislature to stamp and stigmatize groups of persons as falling within this or that category or "caste" would not only be dangerous but suicidal to the principles upon which this government is founded. We are cognizant and too well aware of the perils and hazards involved, even with statutes less vague and evasive, when officials during a particularly critical or chaotic period have embarked on "fishing expeditions" or "witch-hunts" to brand persons and groups as "untouchables" or "undesirables".

The instant case presents only one problem and but one question to this Court for determination. *Can or cannot a person such as Mr. Duncan, who has worked all of his life, who has always had some means of support, who is able to work, who is willing to work, who is in search for work, but who is now temporarily without work and funds, be precluded by the State of California from being brought within its limits in search of employment*?

The State of California has held Mr. Duncan to be *indigent,* and since under the statute in question, the State seeks to prevent him from being brought within its limits even though he is employable,[28] and incapable, under any circumstances for a period of 3 years, of becoming a public charge upon the State,[29] we contend unequivocally that under such standards and by virtue of such interpretation, the California Act is unconstitutional, and must, therefore, be declared to be null and void. We do so for the following reasons:

Privileges and Immunities Provisions

First: the statute is in violation of the privileges and immunities clauses [30] of the Constitution of the United States, guaranteeing that the citizens of each State shall be entitled to all privileges and immunities of the citizens in the several States and of the United States.

Can the proponents for this type of anti-migratory legislation contend that States may prevent the free ingress and egress of citizens going to and from the several States of the United States in search for business, trade, industry or employment?

We know that the rapid and unprecedented growth and development of this country's economy has been in no small measure due to a free and unfettered flow of capital and labor from one part of the country to another.

Opportunities for the investment of capital and employment of labor have prevailed during our epochal periods of expansion in different parts of the country. At one time such opportunities prevailed in the south. During another period, such opportuntities prevailed in the north; while during other periods, they were in the middle-west, the south-west and far-west.

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[28] Mr. Duncan was employed with W. P. A. prior to his coming to California in search for other employment. Under W. P. A. provisions pertaining to employment, sec. 15 provides: "In considering employment of persons upon work projects prosecuted under the appropriations contained in this joint resolution, the agency providing the employment shall determine whether such persons are able to perform the work on work projects to which they can be assigned and no person shall be employed or retained for employment on any such project whose work habits are such or work record shows that he is incapable of performing satisfactorily the work to which he may be assigned on the project." [54 Stat. 611, Public Resolution 88, 76th Congress, 3d Sess.]

[29] To become a public charge, one must be a resident of the State. To become a resident of the State, unde its settlement laws, one must have lived continuously in the State for a period of three years with intent to make it his home. [Cal. Welf. and Inst. Code (Deering, 1937), sec. 2555.]

[30] Art. IV, sec. 2; Fourteenth Amendment.

Capital and labor have invested and shared equally in the development of our economy, because from this country's very inception, it has been the policy both of the States and of the United States to encourage such joint ventures in business, industry and commerce between and among the States. As labor is dependent upon capital, and capital equally so dependent upon labor, each must be permitted to move freely, unharassed and with the maximum amount of facility. One cannot be encouraged and the other discouraged. We cannot say to capital: "You may go and move as freely as you wish, whenever you wish." And, to labor: "You must remain wherever you are, and remain for all time frozen in such place."

Freedom to move is perhaps the most basic of human liberties. Migration of persons and peoples has served as the background for some of the greatest historical episodes of mankind. "The wanderings of our biblical fathers, the voyages of Columbus, the exploits of our pioneers, the hazards faced by our colonial ancestors, and the movement of covered wagons across trackless prairies, all attest to the fundamental nature of human migration." [31]

The available labor market cannot be frozen within the boundaries and limits of the forty-eight States while, at the same time, we permit capital to roam freely, unabated and unharassed without seriously affecting the social, economic and political fabric of our system.[32] To do so would result in the "Balkanization" of the United States and the disintegration of these United States into forth-eight separate and hostile social, economic and political entities, each jealously and avariciously conniving to take for itself the benefits and advantages that may periodically and accidentally come to the other. A nation so divided could not long survive, and it was precisely for the purpose of eradicating the evils then existing, and by the way still existing on the continent of Europe, that this country was created "in order to form a more perfect union".

Thus, in order to create and perpetuate this more perfect union, the framers of the Constitution with calm and deliberation wrote into it: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Any other interpretation of this provision than that it insures beyond all doubt to each of the citizens of the several States the most fundamental right and privilege to move about freely and easily from State to State and through each of the other States in search of opportunity would be calamitous and catastrophic. That this was countenanced by the framers of the Constitution is evidenced by Article IV of the Articles of Confederation. It reads: "The free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States; and *the people of each State shall have free ingress and egress to and from any other State.*"

This clause is unquestionably the model for Article IV, Section 2, clause 1 of the Constitution as adopted. The clause as adopted, to be sure, is not as specific in its inclusion of the fundamental right of free ingress and egress to and from any of the other States of the Union, but that such was the intent of the framers of the Constitution has never been successfully or even seriously challenged. On the other hand strong dicta expressed in numerous decisions rendered by this and other Courts confirm this conclusion.

> "There can be but little question that the purpose of both these provisions [Art. IV of Articles of Confederation and Art. IV, sec. 2 of the Constitution] is the same, and that the privileges and immunities intended are the same in each. In the article of the Confederation, we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by this phrase." [33]

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[31] Testimony of Neil H. Jacoby, Chmn. Ill. Emergency Relief Commission, before House Committee to Investigate the Interstate Migration of Destitute Citizens, Chicago Hearings, Part 3, p. 821.

[32] It is interesting to note that while the State Legislature of California has reenacted the statute to prevent migration, it failed to repeal two statutes, still in effect, for the promotion and encouragement of migration into the State. One of the statutes provides for the creation of a fund not to exceed in the amount of ten thousand dollars in any one year, in any one county for the purpose of encouraging *immigration* and increasing trade in the products of the State of California [Cal. Gen. L. (Deering, 1937), act 8461, sec. 1]; the other authorizes the board of supervisors in each county to levy a special tax to be used for "advertising, exploiting and making known the resources of the county for the purpose of inducing *immigration* to, and increasing the trade and commerce of, said county, or for exhibiting or advertising *for said purposes*, the agricultural, horticultural, viticultural, mineral, industrial, commercial, climatic, educational, recreational, artistic, musical, cultural and other resources or advantages of the county." [Cal. Pol. Code (Deering, 1937), art. IV, sec. 4041.5]

[33] *Slaughter-House Cases*, 16 Wall. 36, 75 (1872).

In discussing the right of unrestricted ingress and egress in the several States, Justice Washington in *Corfield* v. *Coryell*, 6 Fed. Cases 546, 551 (1823), said: "The next question is, whether this act infringes that section of the constitution which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states?' The inquiry is, what are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. *The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits or otherwise;* to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental * * *."

Although dissenting from the majority opinion rendered in the *Passenger Cases*,[34] Chief Justice Taney states: "Living as we do under a common government, charged with the great concerns of the whole Union, every citizen of the United States, from the most remote States or Territories, is entitled to free access, not only to the principal departments established at Washington, but also to its judicial tribunals and public offices in every State and Territory of the Union. And the various provisions in the Constitution of the United States—such, for example, as the right to sue in a federal court sitting in another State, the right to pursue and reclaim one who has escaped from service, the equal privileges and immunities secured to citizens of other States, and the provision that vessels bound to or from one State to another shall not be obliged to enter and clear or pay duties—all prove that it intended to secure the freest intercourse between the citizens of the different States. For all the great purposes for which the federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States. And a tax imposed by a State for entering its territories or harbours is inconsistent with the rights which belong to the citizens of other States as members of the Union, and with the objectives which that Union was intended to attain. Such a power in the States could produce nothing but discord and mutual irritation, and they very clearly do not possess it."

And in commenting upon this opinion, Justice Miller in delivering the opinion for the Court in *Crandall* v. *State of Nevada* [35] says: "Although these remarks are found in a dissenting opinion, they do not relate to the matter on which the dissent was founded. They accord with the inferences which we have already drawn from the Constitution itself, and from the decisions of this Court in exposition of that instrument."

In *Paul* v. *Virginia*,[36] the Court in considering the operation and effect of Article IV, sec. 2 of the Constitution said:

> "It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended to strongly to constitute the citizens of the United States one people as this.

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[34] 7 How. 283, 492 (1849).

[35] 6 Wall. 35, 49 (1867).

> "Indeed, without some provisions of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privileges with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

Again, in *Ward* v. *Maryland*,[37] the Court, upon the same subject, declared:

> "Attempts will not be made to define the words 'privileges and immunities', or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation * * *."

In the *Slaughter-House Cases*,[38] Justice Miller, after reciting both the provisions of art. IV of the Articles of Confederation and art. IV, sec. 2 of the Constitution, and after discussing Mr. Justice Washington's opinion in *Corfield* v. *Coryell*, *supra*, said:

> "This definition of the privileges and immunities of citizens of the States is adopted in the main by this court in the recent case of *Ward* v. *The State of Maryland*, *supra*, while it declines to undertake an authoritative definition beyond what was necessary to that decision. The description when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment and protection of which organized government is instituted. They are, in the language of Judge Washington, those rights which are fundamental. Throughout his opinion, they are spoken of as rights belonging to the individual as a citizen of a State. They are so spoken of in the constitutional provision which he was construing. And they have always been held to be the class of rights which the State governments were created to establish and secure."

And, in commenting on the several decisions, Chief Justice White, in *United States* v. *Wheeler*,[39] said:

> "The controlling influence of the opinion in the *Slaughter-House Cases*, as well as that of Mr. Justice Washington in *Corfield* v. *Coryell*, *supra*, stands out in bolder relief when it is observed that in the latter case, following the statement of the general principles contained in the passage quoted in the *Slaughter-House Cases*, there is found, by way of illustration an enumeration of particular rights declared to be clearly embraced by the general principles, one of which is described as, 'The right of a citizen of one state to pass through or reside in any other state, for purposes of trade, agriculture, professional pursuits or otherwise'."

To be sure, none of the decisions discussed can be squarely cited as authority for the proposition that a person, such as the one in question, brought into the State of California by appellant, cannot be precluded from coming into the State. Nevertheless, as there are no cases or even language to the effect that a person without funds or resources in search for employment in another State can be precluded from coming into that State, and since this is the first case where the issues are so clearly drawn, we feel that there is sufficient authority in the very strong language quoted from the decisions interpreting the meaning and intent of the "privileges and immunities" clauses to warrant a decision that the

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[36] 8 Wall. 168, 180 (1868).

[37] 12 Wall. 418, 430 (1870).

[38] 16 Wall. 36, 76 (1873).

[39] 254 U. S. 281, 297 (1920). See also *Truax* v. *Raich*, 239 U. S. 33 (1915), where the court contended that the right of ingress and egress was guaranteed not only to citizens but alien residents as well. In *State* v. *Moody*, 26 Indiana, 299, 301 (1866), the court in declaring an Indiana statute, which made it unlawful for any Negro or Mulatto to come into, settle in or become an inhabitant of the State, invalid on the basis of *Corfield* v. *Coryell*, cited from Story on the Constitution, sec. 1806:

" 'It (the privileges and immunities clause of the Constitution) is plain and simple in its language: and its object is not easily to be mistaken. Connected with the exclusive power of naturalization in the national government, it puts at rest many of the difficulties which affected the construction of the article of the confederation. It is obvious, that if the citizens of each state were to be deemed aliens from each other, they could not take or hold real estate, or other privileges, except as other aliens. The intention of this clause was to confer on them, if one may so say, a general citizenship; and to communicate all the privileges and immunities which the citizens of the same state would be entitled to under like circumstances.' One of the privileges and immunities arising from this general citizenship is the right to become a citizen of any one of the several states, by becoming a resident thereof."

State of California cannot deny migration into the State the classes of persons which Mr. Duncan represents. To hold otherwise, would be a violation of the fundamental right to pass freely and "to reside and work within the bounds of the United States wherever he may choose * * *",[40] a privilege and attribute of State and Federal citizenship definitely guaranteed by the Constitution of the United States.

Counsel for appellee on page two of his brief contends: It certainly must be admitted that if a State cannot constitutionally exclude paupers from its boundaries it cannot constitutionally prohibit persons from bringing paupers into the State. In *De Jonge* v. *Oregon*, 299 U. S. 353 (1937), this Court points out that it is beyond the power of a State to make a crime of assisting another in the exercise of his constitutional rights. Thus, since the State of California is unable under the privileges and immunities provisions of the Constitution to prevent Mr. Duncan, a resident of Texas and a citizen of the United States, from coming within its borders in search of employment, it is definitely beyond the power of the State of California to hold Mr. Edwards, the appellant, in violation of the statute in question.

Interstate Commerce Clause

Second. The next question which we submit for determination by this Court is whether or not a State under the guise of its police power may enact such legislation as will seriously burden, hinder and impede the commerce and trade among and between the several States.

The statute in question reads: "Every person, firm or corporation * * * that brings or assists in bringing into the State any *indigent* person * * * knowing him to be an *indigent* person is guilty of a misdemeanor."

The statute imposes a duty on every carrier engaged in interstate commerce, in order to escape criminal liability under it, to determine for itself whether it has aboard the carrier persons, travelling to the State of California, who might be deemed *indigent*. This, the carrier must do even though the statute fails to define the types and classes of persons who might answer to that description.

It is well established that every criminal statute creating a new offense must be so explicit in its terms as to inform those who are subject to penalties under it, what conduct on their part will render them liable. A statute so vague in its terms that men of ordinary intelligence must guess at its meaning and differ as to its application violates every essential element of justice and fair play. A statute that cannot be given an intelligible meaning, because of the uncertainty, indefiniteness and vagueness of its terms will be void and wholly inoperative.[41]

Nevertheless, without specific and definite standards to guide it, the carrier is obliged to proceed with an independent investigation of its own to determine who is indigent, or otherwise be guilty of a somewhat mysterious crime. "Under these statutes it is not a defense that the person acted honestly and in good faith, under a mistake of fact. He is bound to know the fact as well as the law, and he acts at his peril. These statutes do not make a guilty knowledge one of the ingredients of the offense. *Commonwealth* v. *Wentworth*, 118 Mass. 441; *Commonwealth* v. *Boynton*, 2 Allen 160; *Commonwealth* v. *Emmons*, 98 Mass. 6; *Commonwealth* v. *Raymond*, 97 Mass. 567, 568; May, Crim. Law, 3; *Commonwealth* v. *Mash*, 7 Metc. (Mass.) 472; *Commonwealth* v. *Farren*, 9 Allen 489; *Commonwealth* v. *Nichols*, 10 Allen 199; *Commonwealth* v. *Waite*, 11 Allen 264; *Commonwealth* v. *Elwell*, 2 Metc. (Mass.) 190; *Commonwealth* v. *Thompson*, 11 Allen 23; *Hourigan* v. *Nowell*, 110 Mass. 470; *Barronet's Case*, 1 El. and Bl. 1; *Reg.* v. *Prince, L. R.*, 2 Cr. Cases 154; 21 Amer. Rep. 268, Note; *Barnes* v. *State*, 19 Conn. 397; *State* v. *Goodenow*, 65 Me. 30; *State* v. *White*, 64 N. H. 48, 5 Atl. Rep. 828." [42]

In order to make such determination, since the burden by statute and law is on the carrier, each of the interstate carriers will be obliged to hire a large staff of investigators and subject every person desiring to go to California to a detailed and rigorous inspection about his or her health, morals, personal and financial position, as well as to all other matters which the investigator may deem essential in making his recommendation to the carrier.

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[40] From Argument by the Hon. Charles Evans Hughes, then attorney for defendants in error, *United States* v. *Wheeler*, 254 U. S. 281, 290 (1920).

[41] *Ex parte* Leach, 215 Cal. 536, 12 Pac. (2d) 3 (1932); *Hewit* v. *State Board of Medical Examiners*, 148 Cal 590, 84 Pac. 39 (1906); *State* v. *Partlow*, 91 N. C. 550 (1884). See also: Freund, *Use of Indefinite Terms in a Statute* (1924) 24 Col. L. Rev. 193; Aigler, *Legislation in Vague and General Terms* (1923) 21 Mich. L. Rev. 831; Note (1931) 44 Harv. L. Rev. 1139; and Crawford, *Statutory Construction* (1940) p. 340.

[42] *State* v. *Cornish*, 66 N. H. 329, 330, 21 Atl. 180, 181 (1890).

In addition to this investigation on its part, the carrier on arriving at the border will be subject to an equally rigorous inspection on the part of the "border patrol" or some other officials (the statute, of course, makes no provision for its administration). The carrier with its "selectees" aboard, if a steamer, will be required to stop at some "quarantine" station along the coast; if a train, bus or touring car, at some appropriate "port of entry" into the State; and, if an airplane, will be required to land somewhere in the fields, immediately on reaching the State line. To complete this inspection, there will be additional delay, cost and expense, all of which will have to be paid by the passengers or be absorbed in the tariff by the interstate carriers. In any way that we look at it, this double investigation will involve a terrific expenditure of money on the part of the carriers, and in addition will prevent thousands of Americans whom the carrier may deem a "poor risk" from interstate passage on a public conveyance. That this is a burden on interstate commerce, no one can deny.

While this is a definite obligation, both the State inspectors and the carrier's investigators will be faced with the same indefinite burden of determining and construing—who is an *indigent*. And, without any clear or definite standards to guide them, what elements are they to look for and consider in making their investigation, and how under such circumstances can there be uniform enforcement? Neither the carrier nor the State officer is fully learned in the law. Neither has had experience in dealing with the niceties and distinctions that can be drawn from the various and conflicting shades of meaning which may be attributed to such vague and general terms. Yet, the carriers and passengers are left by this statute to the mercy of a particular officer who might be assigned to patrol duty that day.

Thousands of passengers are brought to the State of California daily. Disposition will have to be made of each case. Each of the passengers will have to appear before the officers, and as they come before the boards, the carriers will have to submit all supporting documents and records that the persons carried by them are not *indigent*. Each board, then, according to its own standards, will have to rule, finally, whether each passenger carried is or is not *indigent*. The officials will be faced with all sorts of complex problems. Some of the passengers, the officials will determine, are clearly *non-indigent;* others are clearly *indigent;* but their rulings in a great mass of border-line cases will of necessity be a "hit or miss" proposition. What the basis for such ruling might be, they do not or will not know, but rule they must.[43]

An individual, let us say, such as Mr. Duncan in this case, comes before an inspector. This Mr. "X" appears to be "clean-cut", "able", "competent" and a typical American in every respect. There is no question but that he should be admitted, except that he is without funds, and is coming into the State in search for employment. The officer questioning Mr. "X" is also a typical American. He is kind, charitable and particularly sympathetic. He feels certain that the individual before him cannot be the type of person whom the statute intends to keep out. However, before granting him permission to enter, the officer recalls reading in the papers that morning about a meeting held the night before by a large group of idle, unemployed "radicals" for the purpose of exacting higher wages and better working conditions—a riot ensued. The border official reflects for some moments. These are exactly the people, Mr. "X's" type, who are causing all the unrest in the State. These must be the classes of persons countenanced by the statute. They are dangerous and should not be granted permission to enter. Mr. "X" on reconsideration, is, of course, denied permission to migrate into the State.

The statute makes no provision for hearing or appeal, and the tremendous obligation of the carrier as to whether it has or has not complied with the provisions of the statute may be left solely to the whim, caprice and discretion of a single individual. Whether the officer's interpretation of the term *indigent* will coincide with the carrier's concept of the term is problematical; if it does, is the carrier assured that at another time another officer or even the same officer will rule similarly? In most cases, we believe that he will not, for we know that the term "indigent" falls within the same category of broad terms such as "fair", "reasonable", "adequate", "appropriate", "competent", "expedient", "public good", "public welfare", etc.—all subject to varying interpretations, and open to abuse in the exercise of administrative discretion. The problems involved in ascertaining the meaning of such provisions can be determined only in terms of the effect and extent of legislative control, which in turn must revolve around one's basic philosophy as to the underlying objectives of regulation. What belongs within the province of proper legislative regulation under such terms may mean one thing to one group of men and quite another thing to another. How far a statute such as the one in question may go in prohibiting various persons from coming within its limits will, in large part, depend upon what type of persons the officers, charged with the responsibilities of their inclusion or exclusion, desire to keep from coming into the State at any one given time.

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[43] For a more complete discussion of administration through border patrols, see section dealing with this subject in the *Supplement* to this brief. In this connection it is also to be pointed out that under California law a defendant is liable to punishment in the State of California when a public offense commenced without the State is consummated within its boundaries, even though the defendant was out of the State at the time of the commission of the offense charged. Cal. Pen. Code (Deering, 1937) sec. 778. See also, Miller, Justin, *Uniform Criminal Law Administration* (Spring, 1941), Montana Law Review 5, 6.

In a case involving administrative discretion of an immigration official, who denied admission to a group of persons on the ground that they were "likely to become public charges for the following, among other reasons: that they arrived here with very little money [$40 and $25, respectively], and are bound for Portland, Oregon, where the reports of industrial conditions show that it would be impossible for these aliens to obtain employment; that they have no one legally obligated here to assist them * * *," Mr. Justice Holmes in *Gegiow* v. *Uhl*, 239 U. S. 3, 9, 10 (1915), said:

> "The single question on this record is whether an alien can be declared likely to become a public charge on the ground that the labor market in the city of his immediate destination is over-stocked. In the act [before the Court] determining who would be excluded, 'Persons likely to become a public charge' are mentioned between paupers and professional beggars, and along with idiots, persons dangerously diseased, persons certified by the examining surgeon to have a mental or physical defect of a nature to affect their ability to earn a living, convicted felons, prostitutes and so forth. The persons enumerated in short are to be excluded on the ground of permanent personal objections accompanying them irrespective of local conditions unless the one phrase before us is directed to different considerations than any other of those with which it is associated. Presumably it is to be read as generically similar to the others mentioned before and after.
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> "The statute deals with admission to the United States * * *. *It would be an amazing claim of power if commissioners decided not to admit aliens because the labor market of the United States was over-stocked* * * *."
>
> "We cannot suppose that so much greater a power was entrusted by implication in the same act to every commissioner of immigration, even though subject to appeal, or that the result was intended to be effected in the guise of a decision that the aliens were likely to become a public charge."

And, in the instant case, it would likewise be "an amazing claim of power" if, under the statute in question, the State of California and its officials could subject not aliens, but citizens and interstate carriers to obligations of even more tremendous and indefinite scope. The obligation which this statute imposes is not only a definite and arbitrary interference with interstate commerce, the exclusive jurisdiction over which was left to Congress by the Constitution, but is a practice which in operation and effect will serve as barriers more vicious and more retaliatory than the "custom-barrier-controls" on the Continent. If California is permitted to subject passengers and carriers coming from Arizona and New York to such rigid regulation, there is no question but that Arizona and New York will do likewise in retaliation. What the results of such practices may be is not difficult to foresee—certainly, a sad commentary on—"We, the people of the United States, in order to form a more perfect union * * *."

Sufficient data can be cited to the effect that states "may legislate to prevent the spread of crime, and may exclude from their limits *paupers*, convicts, *persons likely to become a public charge*, and persons afflicted with contagious or infectious diseases."[44] This language, however, does not appear in cases dealing with migrants, *paupers*, or *indigents*, but in cases involving the constitutionality of statutes providing for quarantine against diseased cattle and for the exclusion of decayed or noxious food unfit for human consumption.[45] With these cases we do not take issue, nor do we take issue with the proposition that a State may establish and maintain adequate quarantines against persons having contagious diseases.[46]

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[44] *Plumly* v. *Massachusetts*, 155 U. S. 461, 478 (1894); *Missouri K. & T. Ry. Co.* v. *Haber*, 169 U. S. 613, 629 (1898).

[45] See Dunlap, *Power of States to Prevent Entry of Paupers From Other States* (1938) 26 Cal. L. Rev. 608; *Baldwin* v. *Seelig*, 294 U. S. 511, 525 (1934).

[46] *Morgan's Steamship Co.* v. *Louisiana Board of Health*, 118 U. S. 455 (1886).

Thus, any language about excluding persons "likely to become a public charge" expressed in cases dealing with quarantines of persons and products, which at most is but a temporary exclusion, is but of little support, if any, on the question whether a healthy, able, competent and employable person is or is not a proper subject of commerce. This is especially so when in most States today, even a poor, aged or infirm person cannot by statute[47] become a public charge.

The carriage of persons from one State to another is interstate commerce, whether it is done free or for hire.[48] It has even been said that the mere passage of persons on foot across a State line is likewise interstate commerce.[49]

In the *City of Bangor* v. *Smith*,[50] a Maine statute required a common carrier who brought into the State any person, who did not have a settlement therein, to remove him from the State if he fell into distress within a year, and in default thereof to be liable for his support. The case arose out of the bringing of 56 Italians from New York City to Bangor, Maine, who afterwards fell into distress and received poor relief. In holding the statute invalid as an unconstitutional interference with interstate commerce by the State, the Court said:

> "That the carrying of persons from a foreign country into the United States, or from state to state is commerce within the meaning of this clause of the constitution is too well settled to justify the citation of authorities. The bringing of persons by common carriers, then, from another state into this state is commerce between the states. Is the state statute which we have quoted [the statute involved in that case] a regulation of commerce? We think it is. In *Railroad Co.* v. *Husen*, 95 U. S. 465, the court says: 'Transportation is essential to commerce, or rather it is commerce itself and every obstacle to it or burden laid upon it by legislative authority is a regulation.' It is imposing an additional duty upon the carrier. It makes the commerce more burdensome to the carrier; for after a person is landed in the state, it imposes upon the carrier the responsibility for his pecuniary condition for a year * * *"
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> "* * * it is unnecessary to discuss the effect of this statute further. Its provisions are too broad and sweeping to be considered within the power of the state. It is the exercise of a power granted solely to the United States, which the state cannot exercise * * *." [51]
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> "It is said by counsel that it is aimed against pauperism and may be sustained as valid as to persons who are paupers when brought into the state. Its terms are general. It cannot be divided and held to be valid as to one class of persons and invalid as to the others." [52]

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[47] Under these laws enacted by some forty states, a person in order to obtain public relief or aid from a state must be a resident of that state for a period of time ranging from six months to five years with the intention of becoming a resident of that state. For a typical Settlement Law, see, *infra.*, p. 66. These laws are based on the Old English Poor Laws enacted in the reign of Elizabeth. These were "the culmination of successive efforts made over a period of several centuries to deal with the dependency attendant upon the break-up of the feudal system and the consequent growth of towns and cities. People who for centuries had been bound to the land in serfdom were gradually released in increasing numbers. In their search for employment as wage earners many became wanderers unwelcome by any community. As early as 1351 the Statute of Labourers attempted to curtail their movement by requiring them to work at whatever was offered, on penalty of imprisonment. In the sixteenth century, during the reign of Henry VIII, the parishes were charged with responsibility for pvoviding needed assistance to locally-born persons and those who had resided in the parish for three years. This and other related provisions were incorporated in the famous Elizabethan code of the early seventeenth century.

"As a result of this fixing of local responsibility, cruel measures were adopted in an attempt to force people to 'stay put' or to move on once they had left the parish to which they 'belonged'. Scores of thousands of poor folk were taken into custody annually and transported from one part of the kingdom to another unless they could put up sufficient security to insure their not becoming public charges. The custom of 'passing on', or of removing persons without authorization from one parish to another was commonly practiced, the sick, insane and penniless often being dropped in the next town in the middle of the night. Even workers who had secured employment were not immune from forced removal to the place of their settlement; and very often when their settlement was a matter of dispute whole families were removed back and forth several times between parishes. There were thousands of law-suits between the parishes and millions of pounds were spent for litigation and removals.'" Hirsch, Harry M., *Our Settlement Laws*, p. 6. *Cf. Adams County* v. *Burleigh County*. 69 N. D. 780, 291 N. W. 281 (1940).

[48] *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824); *Caminetti* v. *United States*, 242 U. S. 470 (1917); *United States* v. *Burch*, 226 Fed. 974 (1915); see also *Gooch* v. *United States*, 297 U. S. 124 (1936); *Bailey* v. *United States*, 74 Fed. (2d) 451 (1934). See hearings before the Select Committee Investigating National Defense Migration, House of Representatives, 77th Cong., 1st Sess., Part II, p. 4811 et seq. Arising out of such investigation, note newspaper item in *Washington Times-Herald*, dated Tuesday, Sept. 16, 1941: "Toledo, Ohio, Sept. 16, (C. T. P. S.).—Federal Judge Frank L. Kloeb today fined the Great Lakes Sugar Growers Employment Committee $2,000 and costs after it entered a plea of nolo contendre on the charge of transporting laborers from Mexico in May, 1939 and October, 1940 to Toledo in interstate commerce without proper permits. The laborers were brought to the Toledo sugar beet fields. Julio de la Pena, Toledo, driver of the bus used to transport the laborers, was fined $1,000 and costs."

[49] *Covington Bridge Company* v. *Kentucky*, 154 U. S. 204, 218 (1894).

[50] 83 Me. 422, 424, 22 Atl. 379 (1891).

[51] *Ibid*, p. 426.

[52] *Id.*

In declaring invalid a California statute providing for the giving of bond and paying of fees by the owners of steamships bringing passengers into the State, Justice Miller said:[53]

> "The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States. It [the Congress] has the power to regulate commerce with foreign nations: the responsibility for the character of those regulations, and for the manner of their execution, belongs solely to the national government. If it be otherwise, a single State can, at her pleasure, embroil us in disastrous quarrles with other nations."

And, in declaring a somewhat similar New York statute invalid as being inconsistent with the commerce clause of the Constitution, Justice Miller, again delivering the opinion for the Court, said:[54]

> "* * *, the provisions of the Constitution of the United States, on which the principal reliance is placed to make void the statute of New York, is that which gives to Congress the power 'to regulate commerce with foreign nations.' As was said in *United States* v. *Holliday*, 3 Wall. 417, 'commerce with foreign nations means commerce between citizens of the United States and citizens or subjects of foreign governments.' It means trade, and it means intercourse. It means commercial intercourse between nations, and parts of nations, in all its branches. It includes navigation, as the principal means by which foreign intercourse is effected. To regulate this trade and intercourse is to prescribe the rules by which it shall be conducted. The mind,' says the great Chief Justice, 'can scarcely conceive a system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of one nation into the ports of another'; and he might have added, with equal force, which prescribed no terms for the admission of their cargo or their passengers. *Gibbons* v. *Ogden*, 9 Wheat. 190."

True, both the *Chy Lung* and *Henderson* cases deal with two State statutes which impose definite obligations on persons engaged in *foreign commerce* bringing immigrants to these shores. In both cases, the burdens were held to be *contra* to the powers delegated to Congress to regulate foreign commerce. To Congress, however, has also been delegated the power to regulate the commerce between the States, and therefore cannot the same principles as expressed in the above cases be applied to any burden, however small, which a State may impose on that commerce? It if be otherwise, cannot a single State, at her pleasure, embroil each of the other States of this country in disastrous quarrels with each other in the same manner as the legislation in the *Chy Lung* case, *supra*, was directed at foreign commerce?

Also, if in the case of foreign commerce, Congress is charged with the responsibility for the character of the regulations concerning that commerce, and for the manner of their execution, so must Congress be equally charged with respect to interstate commerce.

The transportation of a passenger from Liverpool to New York is one single voyage. So is the transportation of a passenger, let us say, from New York, Chicago, St. Louis, or Salt Lake City to the State of California. The passage of the passenger in the first instance is not complete until he is landed in New York, and in the second case, not until he is permitted to land at his point of destination in the State of California. Thus, a "law or rule emanating from any lawful authority, which prescribes terms of conditions on which alone the vessel can discharge its passengers, is a regulation of commerce; and, in case of vessels and passengers coming from foreign ports, is a regulation of commerce with foreign nations,"[55] so, in the case of railroads, busses, airplanes, steamers and touring cars coming from other States of the Union it is a regulation of commerce, between and among the States.

Whether a law or regulation affects either interstate or foreign commerce is not the controlling factor. The importance of any such regulation lies in the fact that commerce of the type within the exclusive jurisdiction of Congress is being affected. However difficult this may be to determine, "it is clear from the nature of our complex form of government, that, whenever the statute of a State invades the domain of legislation *which belongs exclusively to the Congress of the*

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[53] *Chy Lung* v. *Freeman, et al.*, 92 U. S. 275, 280 (1875).

[54] *Henderson et al.* v. *Mayor of New York et al.*, 92 U. S. 259, 270 (1875).

[55] *Ibid.* p. 271.

United States, it is void, no matter under what class of powers it may fall or how closely allied to powers conceded to belong to the States."[56]

It might be argued that the burden imposed upon the commerce in the instant case is more speculative and less direct than in the above two cases, and therefore is not such an interference prohibited to the States by the Constitution. While it cannot be denied that a tax of one and one-half dollars for each immigrant landed is definitely a specific and direct obligation, we do contend that in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect; and it is apparent that the obligation of the California statute, although indefinite and indirect, is in effect an imposition much more onerous and oppressive. The fact that the carrier is burdened with a costly and laborious dual inspection and investigation and the fact that thousands of Americans will be denied interstate passage on public carriers is in fact a tax not only on every alien and immigrant, but on every citizen of the United States desiring to go by carrier to the State of California.

In addition to this burden and expense, it might also be asked, what will become of the persons brought by the carrier to the State line who are refused admission. Does the State of California or any other State purport to establish a "no-man's land" or a concentration camp within its boundaries for all such undesirables, will the State of California or any other State "dump" these "undesirables" within the boundaries of the bordering sister-states,[57] or will the carrier in order to escape criminal liability be obliged to carry them back to the place of embarkation free of charge? We know of the liability that steamers assume in bringing undesirable persons to our shores. We know of their detention when not being permitted to land, and the obligation upon the steamers to bring such passengers back from whence they came free of charge. Will, under the statute in question, a similar obligation be imposed upon the carrier engaged in interstate commerce?

It might finally be advanced as in the *Henderson* case, *supra*, "that under the decisions of this Court, there is a kind of neutral ground, especially in that covered by the regulation of commerce, which may be occupied by the State, and its legislation be valid so long as it interferes with no act of Congress or treaty of the United States. Such a proposition is supported by the opinions of several of the judges in the *Passenger* Cases; by the decisions of this court in *Cooly* v. *The Board of Wardens*, 12 How. 299; and by the cases of *Crandall* v. *Nevada*, 6 Wall. 35; and *Gilman* v. *Philadelphia*, 3 Wall. 713." But, as to this, Justice Miller says:[58] "this doctrine has always been controverted in this Court and has seldom, if ever, been stated without dissent. These decisions however, all agree, that under the commerce clause of the Constitution, or within its compass, there are powers, which, from their nature, are exclusive in Congress; and in the case of *Cooly* v. *The Board of Wardens*, it was said, that 'Whatever subjects of this power are in their nature national, or admit of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.)"

A regulation which imposes onerous, perhaps impossible conditions on those engaged in commerce, whether foreign or interstate, must of necessity be national in its character—they should be and ought to be the subject of a uniform system or plan. Should this Court hold that the statute in question is not in violation of the commerce clause, New York, Illinois, Arizona, Nevada and every other State of the Union would be obliged to impose equally rigorous limitations in retaliation. To avoid any such discord and rupture in the relation of the States to each other, it is apparent, therefore, "that, if there be a class of laws which may be valid when passed by the States until the same ground is occupied by a treaty or an act of Congress, this statute is not of that class." [59]

The question of interstate migration is not for each State to regulate individually and without regard to the regulations enacted by the other States. It is not a problem which each State in intercourse with all others can settle for itself without interfering with the power over interstate commerce delegated to the Congress of the United States. And again, in the words of Justice Miller:

"We are of opinion that this whole subject has been confided to Congress by the Constitution; that Congress can more appropriately and with more acceptance exercise it than any other body known to our law, * * *" and that by making provision for such a system of laws in those matters, to apply alike and with equal force to persons desiring to migrate from one State to another or to any part of the Union, where opportunities for employment may be available, "which has long been a problem of contest and complaint, may be effectually and satisfactorily settled."[60]

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[56] *Ibid.* p. 272.

[57] See facts in *Adams County* v. *Burleigh County*, 69 N. D. 780, 291 N. W. 281 (1940).

[58] *Henderson et al.* v. *Mayor of N. Y. et al.*, 92 U. S. 259, 272 (1875).

[59] *Ibid*, p. 273.

EQUAL PROTECTION OF THE LAWS

Third: It might be argued by the State of California that it was not the intention of its legislature to burden and interfere with interstate commerce to the extent described. But no matter how little or how great the burden, the intent and purpose of a statute must be determined by its natural and reasonable effect. The statute in no uncertain terms obligates and imposes the duty on every "person, firm or corporation" bringing *indigents* into the State, "knowing them to be *indigents*". There can be no question that the enactment must apply not only to trucks, trailers and automobiles but must apply with equal force to steamers, trains, busses and airplanes.

The State may argue further that a presumption operates in favor of the steamship, rail, bus or airplane companies, but not in favor of persons operating broken-down trucks and automobiles; that persons travelling to California by steamer, rail, bus or air, who can afford to pay for such means of transportation, are not *indigent;* and that persons travelling with others in automobiles and trucks are *indigent.*

For the sake of argument, there might be some basis for this contention and classification, if only the statute contained some standard or guide as to its application. But, under the circumstances, is it the State's contention that the sole consideration for the interpretation of this statute is whether a person is or is not able to pay for his transportation? If so, this statute must fall for want of the equal protection of the laws; for by this standard, a person who is competent, able and willing to work *and who can afford to pay for his transportation on a public carrier, whatever the sum may be, is not an indigent;* while, the person who is competent, able and willing to work and *who cannot afford to pay for his transportation is an indigent.* Thus, firms and corporations owning steamship, railroad, airplane, and bus lines would not be held liable under the statute; while car owners bringing either a mother, father, aunt, uncle, cousin or in-laws would be held liable for bringing *indigents* into the State, even though the statute clearly speaks not in terms of a *poor person* bringing *indigents* into the State, but in terms of "*any person, firm or corporation*" bringing *indigents* into the State.

In either case, the statute must fall, since it fails to come within the limitations imposed upon the States by the fourteenth amendment, which "undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; *that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different* or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."[61]

By such test, it cannot, therefore, be contended that a person carrying a certain class of passengers into the State by touring car *may be criminally liable*, while the firm or corporation carrying the same class of passengers destined for California *cannot be criminally liable*, expecially since the statute imposes an equal obligation on "every person, firm or corporation".

Thus, whatever be the construction placed by the State as to the application of the statute, it fails to meet the equal protection of the laws, if it applies to touring cars and trucks, and not to busses, trains, steamers and airplanes; and, if it is the State's contention that the statute applies equally to all interstate carriers, there is then such a burden on interstate commerce as to be in conflict with the interstate commerce provisions of the Constitution.

It might further be argued that even though there be no discrimination between carriers in violation of the equal protection of the laws, there is such violation, since by the broad and sweeping discretionary powers vested by the statute in question in some official to determine who is or is not indigent, thousands of Americans will be unconstitutionally denied the privilege of looking for employment; and, through no fault of their own, they will be prevented from using for such purpose not only interstate public crariers, but the roads and highways which they as citizens of the United States helped to build and maintain; those with money, of course, being permitted to use the carriers and highways as freely as they may desire.

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[60] *Ibid.* p. 274.

[61] *Barbier* v. *Connolly*, 113 U. S. 27, 31 (1885).

In this case, as in *Truax* v. *Raich*,[62] the State may seek to justify such exclusion as an exercise of the power of the State to make reasonable classifications to protect the health, safety, morals and welfare of those within its jurisdiction. But as in the *Truax* case, "this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the State to deny to lawful inhabitants, because of their race or nationality [or lack of funds], the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. *Butchers' Union* v. *Crescent City Co.*, 111 U. S. 746, 762; *Barbier* v. *Connolly*, 113 U. S. 27, 31; *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369; *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589, 590; *Coppage* v. *Kansas*, 236 U. S. 1, 14. If this could be refused solely upon the ground of race or nationality [or the lack of funds], the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words."

And, in interpreting the provisions of an earlier California statute, dealing with the exclusion of certain foreigners, Mr. Justice Field said:[63]

> "A statute thus sweeping in its terms, confounding by general designation persons widely variant in character, is not entitled to any very high commendation. If it can be sustained as the exercise of the police power of the state as to any persons brought within any of the classes designated, it must be sustained as to all the persons of such class. That is to say, if it can be sustained when applied to the infirm who is poor and dependent, when unaccompanied by his relatives, able and willing to support him, it must be sustained when applied to the infirm who is surrounded by wealth and its attendants, if he is thus unaccompanied. If it can be sustained when applied to a woman whose debauchery consists in the prostitution of her person, it must be sustained when applied to a woman whose debauchery consists in her intemperance in food and drink; and even when applied to the repentant Magdalen who has once yielded to temptation and lost her virtue. The commissioner of immigration is not empowered to make any distinction between persons of the same class; and there is nothing on the face of the act which indicates that the legislature intended that any distinction should be made."
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> "* * * The doctrine now asserted by counsel for the commissioner of immigration, if maintained, would certainly be invoked, and at no distant day, when other parties, besides low and despised Chinese women, are the subjects of its application, and would then be seen to be a grevious departure from principle."[64]

And, as to another California enactment, involving not exclusion, but discrimination as to certain classes of persons through the exercise of unlimited discretion in the issuance of permits, Mr. Justice Matthews, in delivering the opinion of the Court, said:[65]

> "We are consequently constrained, at the outset, to differ from the Supreme Court of California upon the real meaning of the ordinances in question. * * * They seem intended to confer, and actually do confer not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only as to places but as to persons. So that, if an applicant for such consent, being in every way a competent and qualified person, and having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of *mandamus*, to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority

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[62] 239 U. S. 33 (1915).

[63] *In re Ah Fong*, 1 Fed. Cases, 213, 216 (1874).

[64] *Ibid*, p. 217.

[65] *Yick Wo* v. *Hopkins*, 118 U. S. 356, 366, 367 (1885).

> to withhold their assent, without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but it is granted to their mere will. It is purely arbitrary and acknowledges neither guidance nor restraint. §
>
> "This conclusion and the reasoning on which it is based, are deductions from the face of the ordinance as to its necessary tendency and ultimate actual operation. In the present cases were are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons by the broad and benign provisions of the fourteenth amendment to the Constitution of the United States."[66]

Though the statute in the instant case be fair on its face and impartial in appearance, because it applies to "every person, firm and corporation", and applies alike to every person desiring to settle in the State of California, it must be held to be invalid within the meaning of the fourteenth amendment to the Constitution, if it is to be applied and administered "by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances. * * * This principle of interpretation has been sustained by this Court in Henderson *v.* Mayor of New York, 92 U. S. 259; Chy Lung *v.* Freeman, 92 U. S. 275; Ex-parte, Virginia, 100 U. S. 339; Neal *v.* Delaware, 103 U. S. 370; and Soon Hing *v.* Crowley, 133 U. S. 703."[67]

That the person coming by automobile to the State of California to look for employment is similarly situated to the person coming by train or airplane, cannot be denied. That in one case, one may have a five dollar bill in his possession, and in the other case a one hundred dollar bill, is not sufficient justification to rule that the fourteenth amendment was intended as protection only to those with the one hundred dollar bills or to those owning railroads, aeroplanes, or busses and not to those who own trucks, cars or horses. The liberties, rights and privileges guaranteed by the "equal protection of the laws" cannot be construed to depend for its interpretation on poverty or wealth, as the case may be. A statute to meet the requirements of the constitutional provision must operate alike upon all persons and upon all property under the same circumstances and conditions.

CONCLUSION

To conclude, let us first make clear that we have no more objection to the California Statute in the instant case than with the similar statutes in the twenty seven other States, for if the California statute is held unconstitutional, the other statutes must likewise fall. And they must fall for this case is concerned with millions of persons, who through no fault of their own, are in search of employment and new opportunities—the opportunity of being able once again to provide for themselves and their families. These people in the instant case are not vagrants, "bums" or tramps unwilling to toil and sweat with their brain and brawn. In such chaotic and critical days as these, they are asking for little enough in this land of plenty. Have they not been sufficiently plagued? Are they as citizens of the United States, who would if need be give their very lives for the protection and safety of these shores, to be further disgraced, harassed and humiliated because they are seeking employment, and want the right to some economic freedom? Or, as it is intended by such laws, are they to be doomed to a life of slavery and misery?

We know of the difficulties involved in earning a livelihood under normal conditions. It is difficult enough, and what with the limitations imposed by the

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[66] *Ibid.* p. 373.

[67] *Ibid.* pp. 373, 374.

States on the right of an individual to engage in an occupation of its own choosing,[68] can the States now prevent individuals, altogether, from coming into the State to earn a livelihood? The question is far too serious. The problem is not for California, Colorado, Florida, or any other State, alone, to decide. We, as citizens of the United States all have a stake in what the various States of the Union purport to do. These States cannot be permitted to say that one from New York, Illinois, or Missouri cannot come within their limits to look for employment. Should this statute be upheld the twenty States in addition to the twenty-eight already having such legislation would each be permitted to set up all sorts of barriers against the residents of the others.

Is this country to grow and develop as a single and united nation, or are each of us to be confined within the limits of forty-eight separate entities? The results arising through the suspicions, jealousies, the scheming and coniving of one country against the other on the continent of Europe needs no emphasis. Are we in this country also going to impose limitations equally as rigorous on progress expansion and development? Our economy is a national one. It cannot be permitted to disintegrate into an economy of forty-eight small separate units each warring upon and retaliating against the other.

Much has been written about the question of human migration in terms of a post-depression and pre-defense problem. Human migration is now seriously affecting our national defense program, and during the post-war period of readjustment, the problem of interstate migration will be of even greater magnitude.

According to expert testimony presented before the House Committee Investigating National Defense Migration, it was estimated that some two million persons have left their home States for defense centers. Many millions more will be required to do likewise before the national emergency terminates. Can anyone visualize the implications arising out of the situation when during the period of reconstruction this country gears itself from a war to a peace economy? The millions employed in defense will take to the roads. These people, as capital itself, will be in search of new industries and new opportunities. Its impact on our economy will be as dangerous a situation as any anticipated attack by foreign powers. With settlements gained and lost,[69] will each State, individually, during such a period, be permitted to regulate this flow of *huamn cargo* across State lines?

There is no question but that this nation, without regard to State lines, must now prepare for national defense. Attack from abroad is surely not a problem for a single State to cope with but is a problem for the whole of the United States. We, all of us together, must do everything within our power to make these, our shores, impregnable against attack. And, it is equally imperative that this nation, as a whole, without regard to State lines, must deal similarly with the problem of human migration. No single State or group of States, collectively or singly, can prevent four million persons, all good American citizens, from becoming Stateless, homeless and "without a country," or resting-place while moving from State to State as a result of circumstances over which they have no control.

The repercussions of such a situation are so closely connected with our national unity, safety, welfare and security that it cannot of necessity be a State question, alone. It is one for the nation as a whole to determine.

It may be argued, since this question is one of such imminent national importance that it is a legislative and not a judicial question; that it is the court's function only to interpret the laws and not pass upon the wisdom of policy fundamental in the law; and, therefore, that if the emergency is of such proportions, it is for the Congress and not the Supreme Court of the United States to act. To this, we can only say that millions of words have been written about the separations of powers, and we are no nearer its solution. To argue for one point of view rather than the other, in light of all the decisions, is nothing but an expression of one's likes or dislikes. And, this is no time to indulge in such rhetoric or semantics—the lives of millions are at stake.

The constitutionality of the statute in question is before the court. In effect, if upheld, it will deny to the people of the United States the most fundamental right of free "ingress and egress" in search for opportunity. The government is only as strong as its weakest link, and if we have not as yet learned, we should learn now that these sacred rights cannot be toyed with. The people involved are real. They are not pawns in the hands of State governments; they do not want to be involved in a system of being required to carry passports and badges, or to obtain visas and await quotas in migrating from State to State. They are earnest and determined. They do not want to go back to feudal times—to be "pushed around" from city to city, county to county and State to State. They want to be a part of the whole United States and share both in its opportunities and obligations.

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[68] Such as the New York law requiring applicants for licenses as master plumbers to have at least three years of experience in the plumbing industry together with a technical degree in engineering from a college or universtiy approved by the Regents of the University of the State of New York. N. Y. Laws (1936), c. 610. See *Benedetto* v. *Kern*, 167 Misc. 831, 837, 4 N. Y. S. (2d) 844, 850 (1938), aff'd by Mem. Dec. 255, App. Div. 753, 7 N. Y. S. (2d) 227 (1938). See also Silverman, Bennett, Lechliter, *Control by Licensing Over Entry into the Market*, (Spring, 1940), 8 Law and Contemporary Problems 239.

[69] For an analysis of the State statutes providing for the loss of settlement, see Chart II, *infra*, pp. 58–63. For text of Statutes pertaining to the loss of settlement, see *Supplement* to this brief.

Only one case need be cited of the misery that these laws are causing to untold millions. In the words of one of the State judges: [70]

> "It is difficult for the writer of this opinion to pass calmly and dispassionately upon the facts in this case and the law governing the same. One would fain suppress much of the evidence but necessary facts must be set forth. To the credit of the government of this country and the general attitude of our people toward the poor and unfortunate, it may well be said few records show any such callousness toward human beings as this controversy between South Dakota and North Dakota discloses. The case is an illustration of the extent to which 'man's inhumanity to man' may be carried. Human beings are shifted around like so much cargo. Somewhere and somehow the well springs of humanity and brotherhood appeared to be dried up. Sick and impoverished creatures against whom there is no indication of crime, laziness, or willfulness, have no place to lay their weary heads, except such as the generosity of Adams county gives them as a mere subsistence in a situation not of its own making, and for which it is not responsible. The callous indifference of South Dakota seems scarcely credible in this age."

To allow this condition to exist in the last stronghold of democracy is indeed a sad commentary on our way of life. Migration will not stand still, because laws tell it that it must. Industry, business, employment and opportunity do not want to be frozen. In all the investigations made by the House Committee Investigating National Defense Migration, it has not found a single person who would not have remained at home if only there had been some means for even a mere subsistence. Each of them was compelled to leave home out of sheer desperation. And, if not aided by their government, to whom and to what government should they plead for assistance? These are our people. They are like us and are our very own. Losing their farms, their livestock, their machinery and every other means of earning a livelihood, they took to the road as the *Joads* did. Doing so, they did not change morally, physically or spiritually. And. as Americans they have the right to refuse to starve while standing still. They cannot stand still. And, each State of the Union cannot be permitted to impose divers obligations to prevent them from migrating in search of employment. Poverty cannot be declared to be a crime in this country, and we cannot afford to place the "dollar-sign" on each of the borders of the sisterhood of States. We must face the stark reality of the situation. It is an ominous one, but we must act wisely, carefully and cautiously. It is not yet too late. We cannot and must not tolerate such conditions to exist. We must hold sacred the liberties so zealously cherished and guaranteed to all of these people by the Constitution of the United States. This statute must be declared invalid as in violation of the most fundamental liberties guaranteed by that instrument. "This Union cannot permanently endure half slave and half free."

Thus, the judgment appealed from should be reversed and the complaint dismissed.

Respectfully submitted,

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APPENDIX.*

*Counsel is very much indebted to Mr. Thomas J. Winston, Jr. for his assistance in the compilation and analysis of the state and anti-migratory statutes.

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[70] *Adams County* v. *Burleigh County*, 69 N. D. 780, 291 N. W. 281, 283 (1940).

CHART NO. 1.—*Comparative analysis of State statutes*[1] *prohibiting the migration of poor, aged, infirm, and indigent persons across State, county, and municipal boundaries*

Citation to State Statutes (1)	Limitations as to persons			Geo. Lim.[5] (5)	Sanctious[6] (6)	Deportation and Removal[7] (7)
	Subject to Restrictions[2] (2)	Prohibition Applicable to[3] (3)	Knowledge Intent[4] (4)			
Alabama:						
Code (1940), tit. 44, sec. 19	Poor	Any person	Intent	State	Fine, charge	
Ibid., sec. 20	Infant, lunatic, maimed, deaf, dumb, aged, or infirm.	Any person commanding vessel.		State	Charge	
Ibid., sec. 14						Adm. action.
California:						
Welfare & Institutions Code (Deering, 1937), sec. 2615.	Indigent	Every person, firm, or corporation.	Knowledge	State		
Penal Code (1939), sec. 19					Fine and/or impris.	
Colorado:						
Stats. Ann. (1935), c. 124, sec. 10	Pauper	Any person	Knowledge	Both	Forfeit	
Ibid., sec. 7						Adm. action.
Connecticut:						
Rev. Stats. (1930), sec. 1692	Indigent	Any person	Intent	Both	Forfeit, if person becomes charge within one year.	
Rev. Stats. (Supp. 1939), sec. 559e						Court order.
Rev. Stats. (1930), sec. 1691						Adm. action.
Florida: Comp. Gen. Laws (1927), sec. 8003.	Sick or disabled sailor, pauper, vagrant.	Masters, commanders of ships or vessels.		State	Fine or impris.	

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[1] For text of statutes, see Supplement to this brief.

[2] Classes of persons prohibited from migrating. With the exception of Iowa no state statute defines the terms used. For the Iowa definition see p. 10.

[3] Classes of persons prohibited from bringing, transporting, carrying, or sending from place to place persons designated in column 2.

[4] Knowledge denotes knowledge that the person migrating is poor, infirm, indigent, etc. Intent—denotes that the person brought the poor person in with the intent of making the state, county, or locality chargeable with his support. Where the statute makes no provision with regard to knowledge or intent, the column will be left blank.

[5] The term "state" denotes that the statute prohibits migration into the state; "county" prohibits migration from county to county within the state; "both" applies to both county and state; "locality" applies to towns, villages, and other such subdivisions.

[6] Penalties.—The offense is generally a misdemeanor and is punished by fine or imprisonment or both, and in some states the person is also made chargeable for the support of the person brought in. Some statutes levy civil penalties only. These are indicated by the word "forfeit" or "charge" or both.

[7] Deportation is either by court order or administrative action and will be so indicated.

CHART NO. 1.—*Comparative analysis of State statutes prohibiting the migration of poor, aged, infirm, and indigent persons across State, county, and municipal boundaries*—Continued

Citation to State Statutes	Limitations as to persons			Geo. Lim.	Sanctions	Deportation and Removal
	Subject to Restrictions	Prohibition Applicable to	Knowledge Intent			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Georgia:						
Code Ann. (1935), tit. 23, sec. 23-2305	Pauper	Any person	Intent	Both	Charge	
Ibid., sec. 23-2307	Infant, lunatic, maimed, deaf and dumb, blind, aged, or infirm.	Commander of vessel or mgr., or proprietor of theatrical, circus, or any migratory company or any person passing through the state.		State	Charge	
i nois:						
Stats. Ann. (Smith-Hurd, 1935), c. 107, sec. 13.	Pauper	Any person	Knowledge	Both	Forfeit	
Stats. Ann. (Smith-Hurd, Supp. 1940), c. 107, sec. 16.						Adm. action.
Indiana:						
Stats. Ann. (Burns, 1933), c. 46, sec. 10-4601.	Pauper	Any person	Both	State	Fine	
Ibid., tit. 52, c. 1, sec. 52-164						Court order.
Iowa:						
Code (1939) sec. 3828.091	Pauper or poor	Any person	Both	Both	Fine, charge	
Ibid, sec. 3828.090						Court order.
Kansas:						
Stats. Ann. (Corrick, 1935) secs. 39-338, 39-339.	Pauper, person likely to become charge.	Any person		County	Fine, and/or impris	
Kentucky:						
Stats. Ann. (Baldwin's, 1936) secs. 3922, 3923.	Poor	Any person		Both	Charge	
Maine:						
Rev. Stats. (1930) c. 33, sec. 43	Poor, indigent, insane.	Any person	Both	Both	Fine, or impris., charge.	
Ibid, sec. 36						Court order.
Massachusetts:						
Laws. Ann. (1933) c. 117, sec. 28	Poor and indigent	Any person	Both	Both	Forfeit	
Ibid, sec. 23, 25						Adm. action.
Michigan:						
Stats. Ann. (1937) sec. 16.154	Poor or indigent	Any person	Intent	Both, locality	Fine and/or impris	
Ibid., sec. 16.159	Poor or indigent	Any person	Intent	State	Forfeit, charge	
Ibid., sec. 16.191						Adm. action.

Minnesota:						
Stats. (Mason's, 1937) sec. 3163	Insane, idiotic or poor	Any person	Intent	State	Fine or impris	
Ibid., sec. 3173						Adm. action.
Mississippi:						
Code Ann. (1930) sec. 5716	Alien passengers likely to become charge.	Master of ships	-	State	Fine for failure to give surety bond.	
Ibid., sec. 5715	Infant, lunatic, maimed, aged or infirm, or vagrant likely to become charge.	Commanders of vessels, etc.		State	Forfeit for failure to give surety bond.	
Ibid., sec. 5707						Adm. action.
Nebraska:						
Comp. Stats. (Supp. 1939) sec. 68-116	Poor person	Any person	Knowledge	Both	Forfeit	
Nevada:						
Comp. Laws (Hillyer, 1927) sec. 5147	Pauper	Any person	Knowledge	Both	Forfeit	
Ibid., sec. 5150	Pauper or poor or incapacitated or incompetent.	Any person, firm, or corporation, or its agents, etc.	Both	Both	Fine and/or impris	
Ibid. (Supp. 1938) sec. 5144						Adm. action.
New Hampshire:						
Public Laws (1927) sec. 12	Poor and indigent	Any person	Knowledge	County	Fine or impris	
Ibid., sec. 14	Poor and indigent	Any person	Knowledge	State	Fine or impris., charge	
Ibid., c. 106, sec. 31	Poor and indigent	Any person	Knowledge	State	Fine or impris., charge	
Ibid., c. 107, sec. 15	Persons (passengers) having no settlement.	Masters of vessels		State		
Ibid., sec. 17					Fine or impris. for failure to give surety bond.	
Ibid., sec. 13, 18						Court order.
New Jersey:						
Stats. Ann. (1940) tit. 44, c. 1, sec. 124	Poor person	Any person	Intent	Both locality		
Ibid., tit. 2, c. 103, sec. 6					Fine and/or impris	
Ibid., tit. 44, c. 1, sec. 117						Adm. action.
New York:						
Cons. Laws Ann. (McKinney's 1930), sec. 152.	Destitute person	Any person	Both	State	Fine, charge	
Ibid., sec. 151	Poor person	Any person	Intent	County, locality	Fine	
Ibid., sec. 152						Court order.
Ibid., sec. 59, 73						Adm. action.
Rhode Island:						
Gen. Laws, Ann. (1938), c. 70, sec. 1	Poor and indigent	Any person	Knowledge	State, locality	Forfeit	
Ibid., sec. 2	Poor and indigent	Every railroad co., or owner of steamboat, whose officers and servants.		State	Charge, forfeit	
South Dakota:						
Code (1939), sec. 50.0106	Person likely to become public charge.	Any person		County		
Ibid., sec. 50.9901					Fine and/or impris.	
Ibid., sec. 50.0209	Pauper	Any person	Knowledge	Both	Forfeit	
Ibid., sec. 50.0401						Court order.

CHART NO. 1.—*Comparative analysis of State statutes prohibiting the migration of poor, aged, infirm, and indigent persons across State, county, and municipal boundaries*—Continued

Citation to State Statutes	Limitations as to persons			Geo. Lim.	Sanctions	Deportation and Removal
	Subject to Restrictions	Prohibition Applicable to	Knowledge Intent			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Vermont:						
Public Laws (1933) tit. 15, c. 160, sec. 3953.	Poor and indigent	Any person	Both	State	Fine or impris., charge.	
Ibid., sec. 3950	Poor and indigent	Any person	Intent	Locality	Forfeit, charge	
Ibid., sec. 3949	Person intending to become charge.		Intent	State, locality	Fine or impris	
Ibid., sec. 3951						Adm. action.
Washington:						
Rev. Stats. Ann. (Remington's, 1933) tit. 67, c. 1, sec. 9992.	Pauper or poor person.	Any person	Both	State	Fine, charge	
Ibid., sec. 9989						Adm. action.
West Virginia: Code Ann. (1937) sec. 626	Indigent person	Any person	Intent	State	Fine and/or impris	
Wisconsin:						
Stats. (Brossard, 1939) sec. 49.06	Poor person	Any person	Intent	State	Forfeit, charge	
Ibid., sec. 49.03(9)						Court order.
Wyoming:						
Stats. Ann. (Courtright, 1931) c. 29, art. 12, sec. 29-1206.[8]	Pauper, any persons likely to become charge for disability.	Any person	Intent	Both	Fine	
Ibid., sec. 29, 1205 [9]						Adm. action.

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[8] Repealed by Laws (1937), sec. 49, see text of statutes contained in Supplement to this brief.

[9] Repealed by Laws (1937), sec. 49, and superseded by Laws (1937), sec. 38, see text of statutes contained in Supplement to this brief.

CHART NO. 2.—*Comparative Analysis of State statutes*[1] *concerning settlement laws and provisions for interstate cooperation*

Settlement				Provision for Interstate Cooperation[5] (5)
Citations to State statutes (1)	Requirements for State, local relief[2] (2)	Loss of[3] (3)	Relief-lack of Settlement[4] (4)	
Alabama: Code (1940) tit. 44, sec. 5	Six months			
California:				
Welfare & Institutions Code (Deering, 1937) sec. 2555.	Three years[6]			
Id		Absence, one year		
Colorado: Stats. Ann. (1935) sec. 16	One year			
Connecticut:				
Rev. Stats. (1930) sec. 1685	Four years			
Rev. Stats. (Supp. 1935) sec. 663c			Prov. for	
Ibid., sec. 667c				Prov. for.
Florida: Comp. Gen. Laws (Supp. 1936) sec. 2276 (5).	Two years			
Illinois: Stats. Ann. (Smith-Hurd, Supp. 1940) c. 107, sec. 17.	Three years			
Indiana:				
Stats. Ann. (Burns, Supp. 1940) sec. 52-147d.	Three years			
Ibid., sec. 52-147f		Absence, one year		
Ibid., sec. 52-156			Prov. for	
Iowa: Code (1939) sec. 3828.088	One year			
Kansas:				
Stats. Ann. (Corrick, Supp. 1939) sec. 39-305 (4).	Local relief, five years.			
Ibid., sec. 39-101	State relief, one year.			
Ibid., sec. 39-305 (7)		Local, absence one year.		
Ibid., sec. 39-101		State, six months		
Ibid., sec. 39-716				Prov. for.
Maine:				
Rev. Stats. (1930) c. 33, sec. 1-iv	Five years			
Ibid., sec. 3		Absence, five years.		
Laws (1933) c. 188, sec. 1				Prov. for.
Massachusetts:				
Laws Ann. (1933) c. 116, sec. 1	Five years			
Id		Absence, five years.		
Laws. Ann. (Supp. 1940) c. 117, sec. 17, 18.			Prov. for	
Michigan:				
Stats. Ann. (1940) sec. 16.445	State relief, one year.			
Ibid., sec. 16.168	Local relief, one year.			
Ibid., sec. 16.413				Prov. for.
Minnesota:				
Stats. (Mason's, 1927) sec. 3161	Two years			
Id		Absence, one year		
Mississippi:				
Code Ann. (1930), sec. 5703	Six months			
Ibid., sec. 5708			Prov. for	
Nebraska:				
Comp. Stats. (Supp. 1939) sec. 68-115).	One year			
Id		Absence, one year		
Nevada:				
Comp. Laws (Hillyer, Supp. 1938) sec. 5143.	Three years			
Ibid., sec. 5151.03(6)			Prov. for	
New Hampshire:				
Laws (1933), c. 142, sec. 1	Five years			
Ibid., sec. 2		Absence five years.		
Laws (1937), c. 202, sec. 6-ix				Prov. for.

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[1] For text of typical settlement law, see p. 66, infra.

[2] Residence requirements for local and state relief.

[3] Provision for loss of settlement.

[4] Provisions for temporary relief to persons without settlement.

[5] Provision for cooperation between states for transfer and removal of persons having no settlement. For text of typical statute see p. 67, infra.

[6] The California State Relief Appropriation Act of 1940 makes provision for a settlement period of five years. It is questionable whether the provision may be invoked without reenactment in subsequent appropriations. See Cal. Laws (1940) (First Extraordinary Sess.) C. 45, Sec. 10.

CHART NO. 2.—*Comparative analysis of State statutes concerning settlement laws and provisions for interstate cooperation*—Continued

Settlement				Provision for Interstate Cooperation (5)
Citations to State statutes (1)	Requirements for State, local relief (2)	Loss of (3)	Relief-lack of Settlement (4)	
New Jersey:				
Stats. Ann. (1940) tit. 44, c. 1, sec. 102.	Local relief, five years.	Local absence, one year.		
Stats. Ann. (Supp. 1941) tit. 44, c. 8, sec. 42.	State relief, one year.	State, absence one year.		
Ibid., sec. 54			Prov. for	
Ibid., sec. 35				Prov. for.
New York:				
Cons. Laws Ann. (McKinney's, 1930) sec. 53.	One year			
Ibid., secs. 18 (1-a) 18 (1-c), 65			Prov. for	
Ibid. (Supp. 1940) sec. 157				Prov. for.
Rhode Island:				
Gen. Laws Ann. (1938) c. 68, sec. 1 (7).	Five years			
Id		Absence, five years.		
South Dakota:				
Rev. Code (1939) sec. 50.0102 (4)	One year			
Ibid., sec. 50.0102 (6)		Absence, thirty days.		
Ibid., sec. 50.0103			Prov. for	
Vermont:				
Public Laws (1933) tit. 15, sec. 3923.	One year			
Ibid., sec. 3954				Prov. for.
West Virginia:				
Code Ann. (1937) sec. 626(90), (4)	One year			
Wisconsin:				
Stats. (Brossard, 1939) sec. 49.02, (4).	One year			
Ibid., 49.02 (7)		Absence, one year		
Ibid., sec. 49.04			Prov. for	
Ibid., sec. 49.026				Prov. for.
Wyoming: Laws (1937), c. 88, sec. 37	One year			

TYPICAL STATE ANTI-MIGRATORY LAW

New Hampshire Public Laws (1926) c. 107

Sec. 14. *Bringing Into State: Penalty.* If any person shall bring into this State and leave, or shall so bring with intent to leave, any poor and indigent person having no settlement in the State and no visible means of support, knowing such person to be poor and indigent, as aforesaid, or shall hire or procure such person to be so brought, or shall aid or assist therein, he shall be fined not more than five hundred dollars or imprisoned not more than one year, and shall be liable to any town or county for all sums of money expended by it for the support of such poor and indigent person, to be recovered in an action on the case.

R. S. 67:5, C. S. 71:5, 6. G. S. 75:4, 5. 1878, 31:1.

G. L. 83:5, 7 P. S. 85:13, v. 400.

Sec. 12. *Bringing Into County: Penalty.* If any person shall bring and leave, or bring with intent to leave, any poor and indigent person, having no visible means of support, into any county not chargeable with his support from any other county in which such poor person has resided or been supported, such person not having a legal settlement in any town nor any relation chargeable for his support within the county into which he is brought, knowing him to be thus poor and indigent, he shall be fined not more than two hundred dollars, or imprisoned not more than six months.

R. S. 67:9, C. S. 71:10, G. S. 75:9. G. L. 83:11.

P. S. 85:11, xlv, 139, 181, lv, 339.

Sec. 13. *Removals.* Every such poor and indigent person may be removed, by order of the superior court, from said county into the county from which he was so brought.

R. S. 67:10. C. S. 71:11. G. S. 75:10. G. L. 83:12.

P. S. 85:12. xlv, 139, 181, lv, 339.

Sec. 18. *Removal on Warrant.* Any justice of the superior court, any justice of a municipal court, or any justice of the peace, upon complaint of the overseers of the poor of any place or of either of the county commissioners of any county, in term time or in vacation, may, by warrant directed to a constable or other person therein designated, cause any pauper not born nor having a settlement in this State, who may conveniently be removed, to be conveyed, at the expense of the county within which such pauper may be, to any other State, or, if not a citizen of the United States, to any place beyond the sea where he belongs.

1862, 2592. G. S. 75:11. G. L. 83:13. P. S. 85:19.

Sec. 15. *Bond for Passengers.* The master of a vessel, having passengers on board who have no settlement in this State, shall not suffer such passengers to land until he gives bond to the State in a sum equal to two hundred dollars for every such passenger, with sufficient sureties, to the satisfaction of the selectmen of the town in which such passengers are landed, conditioned to indemnify and save harmless such town, and every town and county in the State, from all expenses which for three years thereafter may arise from such passengers, whose names shall be inserted in the bond.

R. S. 67:6. C. S. 71:7. G. S. 75:6. G. L. 83:8. P. S. 85:16.

Sec. 17. *Penalty.* If any master suffers any such passenger to land before such bond is given, unless the same is dispensed with by the selectmen on application therefor, he shall be fined not more than two hundred dollars for each passenger so landed, or imprisoned not more than one year.

R. S. 67:7. C. S. 71:8. G. S. 75:7. G. L. 83:9. P. S. 85:17.

New Hampshire Public Laws (1926) c. 106

Sec. 31. *Penalty; Liability.* If any person shall bring into this state and leave in any town, or shall so bring with intent to leave, any poor and indigent person having no settlement in such town and no visible means of support, knowing such person to be poor and indigent as aforesaid, or shall hire or procure such poor and indigent person to be so brought, or shall aid or assist therein, with intent to charge such town with the support of such poor and indigent person, he shall be fined not more than five hundred dollars or imprisoned not more than one year, and shall be liable to any town in which such person has no settlement for all sums of money expended by it for the support and maintenance of such poor and indigent person, to be recovered in an action on the case.

1869, 56:1. 1878, 31:1. G. L. 83:6. P. S. 85:14.
lxvi, 330.

TYPICAL STATE SETTLEMENT LAW

Cal. Welfare and Institutions Code. (Deering, 1937) Sec. 2555

Requirements for state residence. A resident of the State of California is a person who comes within all the following descriptions:

(a) Who has lived continuously in the State for a period of three years with the intent to make it his home.

(b) Who, during the three-year period aforementioned, has not received any public or private relief or support from friends, charitable organizations, or relatives other than legally responsible relatives; but time spent in a public institution or on parole therefrom shall not be counted in determining the matter of residence in this or another State.

(c) Who has not lost his residence by remaining away from this State for an uninterruped period of one year. Absence from the State for labor or other special or temporary purpose does not occasion loss of residence.

Cal. Welfare and Institutions Code. (Deering, 1937) Sec. 2556

Requirements for county residence. A person who is a resident of California within the meaning of this chapter is a lawful resident of the county wherein he applies for aid if he has resided therein continuously for one year immediately preceding his application for assistance. If the applicant has no such residence, the county wherein he last resided continuously for one year immediately preceding his application shall be responsible for his support. If the applicant has no such year's residence within three years preceding application, that county shall be responsible for his support wherein he was present for the longest time during the three-year period. Time spent in a public institution or on parole therefrom or in a private charitable institution shall not in any case be counted in determining the matter of county residence.

TYPICAL STATE STATUTE PROVIDING FOR INTERSTATE COOPERATION

Mich. Stats. Ann. (Supp. 1940) Sec. 16.413

Interstate transportation of indigents, transfer, support; reciprocal agreements with other states; restriction; construction of section. Sec. 13. The commission is hereby authorized, subject to the approval of the attorney general, to enter into reciprocal agreements with corresponding state agencies of other states, regarding the interstate transportation of indigent persons, and to arrange with the proper officials in this state for the acceptance, transfer and support of persons receiving any form of public aid or relief in other states in accordance with the terms of such reciprocal agreement: Provided, That this state shall not, nor shall any county or any county department of social welfare, in this state, be committed to the support of persons whom the commission determines are not entitled to public support under the laws of this state. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform laws of such states as enact similar legislation.

Exhibit No. 11

SUPPLEMENTAL STATEMENT OF JOHN H. TOLAN, AMICUS CURIAE

FRED F. EDWARDS v. *THE STATE OF CALIFORNIA*, NO. 17

In my oral argument I cited two sections of the California Penal Code which, in the operation of the statute before the Court, would have the effect of making the indigent person brought into the State equally liable for prosecution with the transporter, the appellee Edwards.

The Code sections are as follows:

"27. *Crimes, persons liable to punishment for.* The following persons are liable to punishment under the laws of this state:

* * * * * * *

3. All who, being without this state, cause or aid, advise or encourage, another person to commit a crime within this state, and are afterwards found therein."

"31. *Who are principals.* All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, * * * are principals in any crime so committed."

Exhibit No. 12.

SUPPLEMENT TO BRIEF OF JOHN H. TOLAN, AMICUS CURIAE, *EDWARDS* v. *CALIFORNIA*, NO. 17

ANALYSIS OF MATERIAL BEARING ON THE ECONOMIC AND SOCIAL ASPECTS OF THE CASE OF FRED F. EDWARDS VS. THE PEOPLE OF THE STATE OF CALIFORNIA (NO. 17, OCTOBER TERM, 1941, SUPREME COURT OF THE UNITED STATES)

From the Record and Reports of the Select Committee to Investigate the Interstate Migration of Destitutes Citizens and the Select Committee Investigating National Defense Migration. Research and analysis by Herbert Roback and Leonard A. Thomas, of Committee staff

It is our belief that the welfare of the Nation is seriously jeopardized by penal statutes which have the effect—whatever be their intent—of confining or blocking the free flow of human migration in the United States.

It is our hope that in presenting a factual background of the extent and character of the migration of destitute citizens among the States, we can be of some assistance in the solution of a problem which seems likely to have an ever-increasing importance bearing on the internal well-being of the Nation.

The penal statute now before the Supreme Court of the United States *in the matter of Fred F. Edwards* v. *The People of the State of California*, typical of antimigratory statutes in the majority of States, aims not at any offense malum in se, but, by indirect prohibition,[1] seeks to prevent the entry into a State of a citizen of the United States, Duncan, whose only mark of distinction pertinent to the case before the court, is that he is poor.

Who are the Duncans of America? Can they be fitted into the framework of a poor-law system incompatible with the American spirit of independence and equal opportunity, and with the economic facts of our national life?

We have come a long way from the days of a crumbling feudalism, when the manor lords of rural England sought by repressive measures to bind their restless serfs to the land. We do not have today the flogging, branding, mutilation, and death penalty provided by early "vagrancy statutes" for the wandering poor. We do not now, as we did in our earlier history, auction the poor like chattel to willing bidders, apprentice and indenture them, house them with the criminal and the insane, subject them to the degrading test of the workhouse.[2]

We have not outlived, however, the legacy of the English poor laws which chained men to their native places and kept strangers on the move. Our statutes of settlement, removal, and exclusion, and our administrative practices bear a startling likeness to their antecedents 400 years ago. Without substantial modification, we can apply a finding of a monumental study on the English poor laws to treatment of the poor in twentieth-century America:

> * * * Throughout the whole period dealt with in this volume, persons "without visible means of subsistence," whether or not they applied for relief,

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[1] The parties to this controversy are in complete accord that the issue presented ultimately involves the constitutional rights of the migrant Duncan and not those of the defendant himself. Appellee's brief, dated April 21, 1941, p. 3; appellant's brief, dated February 17, 1941, pp. 14-15. (See Appendix K, p. 69, for compilation of all State antimigratory legislation, including exclusion laws and removal statutes.)

[2] D. M. Schneider, The History of Public Welfare in New York State, 1609-1866, Chicago, 1938; M. D. Creech, Three Centuries of Poor Law Administration, Chicago, 1936; S. P. Breckinridge, The Illinois Poor Law and Its Administration, Chicago, 1939; G. A. Browning, The Development of Poor Relief Legislation in Kansas, Chicago, 1935.

> and however their destitution was brought about—whether from old age, sickness, or unemployment—underwent, in effect, what Roman law termed a "capitis diminutio," and ceased to enjoy the rights of the ordinary citizen. It was no longer a question of relieving the sufferings of "God's poor." Instead of the pious Christian washing the feet of beggars, whom he would meet in Paradise, a public official was required, at the least cost, to suppress a common nuisance.
>
> This conception of "destitution" as a public nuisance had unforeseen results in the mind of the unpaid and annually elected parish officer. He became obsessed with the notion of ridding his parish of the nuisance at the least possible expense to the rate-payers to whom he was responsible. Seeing that the men, women, and children concerned could not be destroyed like choughs and mice, the easiest and cheapest way was to thrust the pauper, or potential pauper, across the parish boundary, into the outer world. Hence the immediate and ever-recurring zeal displayed by the overseer to put in operation the preposterous law of 1662 for the forcible removal to their places of settlement, of poor persons "not belonging to" his own parish whom he chose to think likely, at some future time, to become chargeable to the parish. Hence the eagerness, a century later, to pervert the Vagrancy Acts into a method of "clearing" the parish of beggars and other "unemployed" persons, by "passing" them, at the expense of the counties that they traversed, round and round the kingdom, and, wherever practicable, pushing them across the border into Scotland, or dispatching them overseas to Ireland or Jersey.[3]

There were voices even then that cried out in the wilderness against the onerous restrictions on the mobility of the underprivileged "who live by labor." Adam Smith, the great economic philosopher, called for—

> the repeal of the law of settlements, so that a poor workman, when thrown out of employment in one trade or in one place, may seek for it in another trade or in another place, without the fear either of a prosecution or of a removal * * *[4]

The prefatory note to a careful study of three centuries of poor law administration in Rhode Island states:

> Basic, too, are the obsolete and archaic provisions of a poor law which still places a penalty upon a railroad, a ship, or an individual for bringing into the State a person who may become destitute; or which provides that a person, although he may not have asked for assistance, may be removed by a constable or a town sergeant from a town in which he has thought to better his condition; or which penalizes a citizen who provides a residence for a person whom the town council deems undesirable; or carries a provision for disfranchising a citizen who has become destitute to such a degree that public aid is necessary. Whatever justification such principles may have had in the settlement and growth of a State during the seventeenth, eighteenth, and nineteenth centuries, their value has become obsolete in the social and economic organization of the twentieth century.[5]

The factual basis for the assertion that the statute in the case at bar "has become obsolete in the social and economic organization of the twentieth century" is hereinafter set forth.

MIGRATION IS A DOMINANT CHARACTERISTIC OF AMERICAN LIFE

Geographic mobility has always been a habit of the American people. In earlier days the westward movement was its most striking manifestation. Cheap and fertile land attracted pioneers seeking a new economic foothold. In the wake of the more adventurous pioneer came farm families to cultivate the soil and tradespeople to service the agricultural population. New waves of migration followed upon the old. Those who abandoned their holdings to seek greener pastures were replaced by less advantaged newcomers.[6] Today, farm-to-farm migration takes place with a frontier gone and opportunity diminishing;[7] nevertheless the tradition of mobility persists. More than a million American families change farms every year.[8]

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[3] Sidney and Beatrice Webb, English Local Government: English Poor Law History: Pt. 1. The Old Poor Law, London, 1927, p. 407.

[4] Adam Smith, An Inquiry Into the Nature and Causes of the Wealth of Nations, First Modern Library Edition, New York, 1937, p. 437. Theo. Ruggles, Esq., justice of the peace for the counties of Essex and Suffolk, noted in 1794: "Mr. Hay, in his plan, published in 1735, would have all notion of parochial settlement abolished, as being the root from which every evil relating to the poor sprung; every parish being in a State of expensive war with the rest of the Nation, regarding the poor of all other places as aliens, and caring not what becomes of them * * *." (History of the Poor, London, 1794, vol. 2, pp. 88–89.)

[5] Creech, op. cit., author's preface, p. xx. The conflict of ancient pauper statutes with the facts of contemporary destitution was dramatically signalized in controversy as to right of franchise by depression relief recipients. The constitution of New Jersey (art. 2), for example, provides that "no pauper * * * shall have the right of an elector." Protest over this exclusion as applied to relief recipients resulted in their being permitted to vote. See New York Times, April 12, 1934, September 11, 1936.

Migration to the cities proceeded simultaneously with the building of the West.[9] When public lands no longer remained open for settlement, the urbanward movement intensified.[10] Industrial jobs and the cultural attractions of urban living drew millions of rural youth. In 1870 almost three-fourths of the American people lived in rural areas; today this proportion is much less than one-half.[11] The net movement from farms within the last 50 years probably numbers 20,000,000 persons.[12] The two-way stream of migration greatly exceeds the net migration balance. Thus the 6,000,000 persons moving from farms to cities during 1920–30 represented the difference between some 13,000,000 moves to, and 19,000,000 moves away from, farms.[13] Assuming that every migrant moved only once during the 10-year period, the sum of movements in both directions approximated the total number of persons on farms, or a quarter of the Nation's entire population.[14]

Movements, whether rural or urban, crisscross State lines. A conservative estimate places the number of workers annually crossing State lines at 2,000,000.[15] Inclusion of family members and dependents affords an estimate of 4,000,000 persons migrating across State lines each year in pursuit of industrial employment alone.[16]

Migrants enter and leave every State in the Union. Behind this flux are discernible more permanent patterns of relocation. Since 1850, when the data were first gathered, each census "has shown that more than one-fifth of the native Americans have migrated from the States of their birth and were living in other States." [17] Thus in 1930 about 25,000,000 native Americans were living outside the

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[6] Interstate Migration, Report of the Select Committee to Investigate the Interstate Migration of Destitute Citizens, pursuant to H. Res. 63, 491, 629 (76th Cong.), and H. Res. 16 (77th Cong.), H. Rept. No. 369, Washington, 1941, p. 298 (hereinafter cited as Interstate Migration, Report of Select Committee); Carl C. Taylor and others, Disadvantaged Classes in American Agriculture, U. S. Department of Agriculture, Social Research Report No. VIII, Washington, 1938, p. 72; Conrad Taeuber and Carl C. Taylor, The People of the Drought States, Works Progress Administration Research Bulletin, Washington, 1937, p. 29; James C. Malin, Turn-over of Farm Population in Kansas, Kansas Historical Quarterly, vol. 4, No. 4, November 1935, pp. 339–372; Donald G. Hay, Rural Population Migration in the Northern Great Plains, Lincoln Hearings of Select Committee, p. 1386.

[7] Interstate Migration, Report of Select Committee, pp. 296 ff; Farm Tenancy, Report of the President's Committee, Washington, 1937, pp. 6, 7.

[8] Interstate Migration, Report of Select Committee, p. 296; Carl C. Taylor and others, op. cit., p. 76.

[9] Interstate Migration, Report of Select Committee, p. 281; Harold F. Dorn, Migration and the Growth of Cities, Social Forces, March 1938, vol. 16, No. 3, pp. 328–337.

[10] U. S. National Resources Committee, Problems of a Changing Population, Washington, 1938, p. 83.

[11] W. S. Thompson and P. K. Whelpton, Population Trends in the United States, New York, 1933, p. 24. Since 1920 the rural population has been divided by the census into farm and nonfarm. About one-fifth of the population in the United States now lives on farms.

[12] Interstate Migration, Report of the Select Committee, pp. 281, 287. Based on estimates by O. E. Baker, of the U. S. Department of Agriculture, Rural-Urban Migration and the National Welfare, Annals of the Association of American Geographers, June 1933, vol. 23, No. 2, p. 68, and by U. S. Department of Agriculture, Farm Population Estimates, January 1, 1940 (mimeographed).

[13] Interstate Migration, Report of Select Committee, p. 282; U. S. Department of Agriculture, Farm Population Estimates, January 1, 1940 (mimeographed).

[14] Ibid.; C. E. Lively and Conrad Taeuber, Rural Migration in the United States, Works Progress Administration Research Monograph XIX, Washington, 1939, p. 23.

[15] John N. Webb, Internal Migration: Asset or Liability? Proceedings of the National Conference of Social Work, New York, 1939, pp. 245–246.

[16] Interstate Migration, Report of Select Committee, p. 469. This estimate refers to migrants covered by the old-age insurance provisions of the Social Security Act.

[17] U. S. Department of Commerce, Bureau of the Census, Fifteenth Census of the United States: 1930, vol. II, p. 135.

States of their birth.[18] Though all States have exchanged populations, the general drift of movement has been from south to north and from east to west.[19] The metropolitan regions have absorbed the greater part of this migration.[20]

Migration to California today is a continuation of the historic westward trend.[21] California is a State virtually built up by migration. From less than 400,000 in 1860, the population of California has come to be almost 7,000,000 by 1940, a growth of about 1,800 percent. The rate of growth has been over 4 times that of the population for the whole country. Through the 8 decades migration has contributed nine-tenths of the population increase [22] (see chart). In 1930, 2 of every 3 persons living in California were born elsewhere.[23]

The influx of 2,000,000 persons to California in the boom decade of the 1920's was "the greatest single movement in the entire history of the country, one of the greatest in the world * * *." [24] California grew during this decade as much as in the first 60 years of its development from a frontier State.[25] It is popularly supposed that migration to California within the past few years is an unusual occurrence. In 1930–40 the volume of movement was little more than half that of the preceding decade. A survey conducted by the United States Department of Agriculture shows that the net migration into California during the 1930's numbered about 1,100,000 persons.[26]

MIGRATION GENERALLY PROCEEDS FROM AREAS OF LESSER TO AREAS OF GREATER ECONOMIC OPPORTUNITY

People may move in search of pleasure or health, or because of a restless urge to wander, but the great majority of American migrants are job seekers.[27] The broad patterns of movement as well as the short-time shifts are determined by the changing distribution of employment opportunities. Manufacturing and commercial jobs are centered in and around the large cities.[28] Declining opportunity in agriculture and the extractive industries has created large labor re-

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[18] Prof. Frank Lorimer, Background of Internal Migration, New York Hearings of Select Committee, p. 11; U. S. National Resources Committee, op. cit., p. 85.

[19] Fifteenth Census of the United States: 1930, p. 139; R. D. McKenzie, the Metropolitan Community, New York, 1933, p. 12.

[20] Lorimer, New York Hearings of the Select Committee, p. 11; Dorn, op. cit.; U. S. National Resources Committee, op. cit., p. 90.

[21] Interstate Migration, Report of Select Committee, p. 304. "Additions to California's population through the entrance of these hundreds of thousands of persons represent a continuation of the normal westward movement of population, which has been a factor in California's growth since it became a State" (Report of the migrant committee, California State Chamber of Commerce, San Francisco Hearings of Select Committee, p. 2758).

[22] Ibid., p. 305; Seymour J. Janow, Volume and Characteristics of Recent Migration to the Far West, one of several reports presented by the staff of the Bureau of Agricultural Economics, U. S. Department of Agriculture at the San Francisco Hearings of the Select Committee, pp. 2269 ff. (These reports will be collectively referred to in the text as the Department of Agriculture migration survey.)

[23] Fifteenth Census of the United States: 1930, vol. II, p. 147. According to the population study of the U. S. National Resources Committee (op. cit., p. 99) "The movements of native-born persons to California has been unequaled in volume by similar movements to any other State. In 1930 the number of residents in California who had been born in other States was more than 600,000 greater than the total population of Philadelphia, the third largest city of the Nation. The number of persons who were born elsewhere but were living in California in 1930 was about one-third of the total population of Canada. * * *"

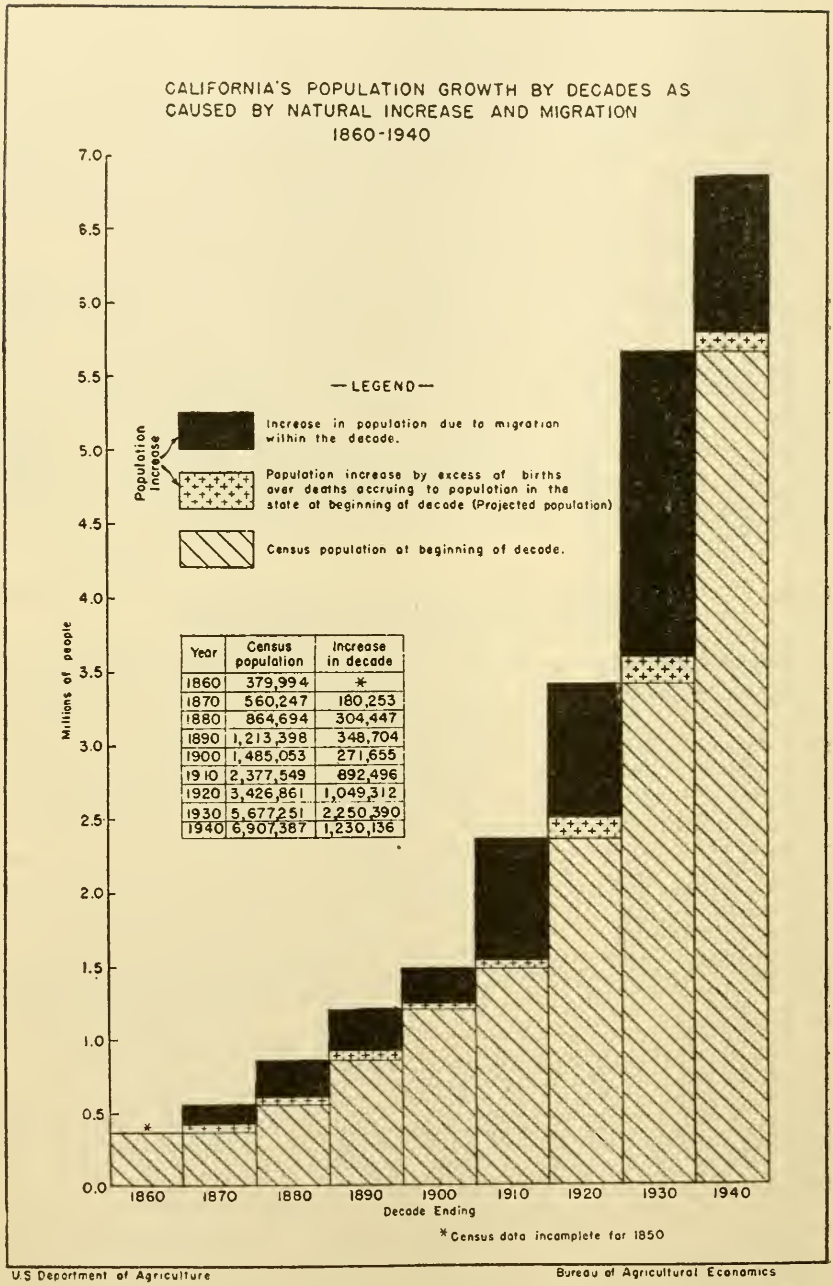
[24] C. W. Thornthwaite, Internal Migration in the United States, Philadelphia, 1934, p. 18.

[25] Edwin Bates, Migration Into California in the 1920's, Los Angeles Hearings of Select Committee, p. 3068.

[26] Interstate Migration, Report of Select Committee, p. 304; Janow, San Francisco Hearings of Select Committee, p. 2274.

[27] Interstate Migration, Report of Select Committee, p. 9; John N. Webb, Migrant Families, Works Progress Administration Research Monograph XVIII, Washington, 1938, p. 8; John N. Webb, The Transient Unemployed, Works Progress Administration Research Monograph III, Washington, 1935, p. 50.

[28] U. S. National Resources Committee, op. cit., p. 72; McKenzie, op. cit., pp. 53 ff; Thompson and Whelpton, op. cit., p. 32; Carter Goodrich and associates, Migration and Economic Opportunity, Philadelphia, 1936, ch. VII; Interstate Migration, Report of Select Committee, pp. 676, 677.



CALIFORNIA'S POPULATION GROWTH BY DECADES AS CAUSED BY NATURAL INCREASE AND MIGRATION 1860-1940

Year	Census population	Increase in decade
1860	379,994	*
1870	560,247	180,253
1880	864,694	304,447
1890	1,213,398	348,704
1900	1,485,053	271,655
1910	2,377,549	892,496
1920	3,426,861	1,049,312
1930	5,677,251	2,250,390
1940	6,907,387	1,230,136

*Census data incomplete for 1850

U.S Department of Agriculture

Bureau of Agricultural Economics

serves and a migration trend toward urban-industrial centers.[29] The trend of population movement has been "away from areas of economic insecurity and low levels of living." [30] The study on population redistribution by Goodrich and others found that—

> in general, the poorer regions gave up population to the richer ones, and within sections it was the more prosperous communities—largely urban and industrial—which drew people from the surrounding areas.[31]

Receiving areas do not always maintain their economic advantage. Industries decline; land, timber, and mineral resources become depleted. New resources are discovered and developed; new industries spring up, and old ones migrate elsewhere in order to compete on a better footing.[32] The relocation of industry must be attended by the migration of workers, else they become stranded and submerged groups without an economic base.[33]

Migration to California has been a response to developing opportunity in the far West and to declining opportunity elsewhere. The great migration of the 1920's was overwhelmingly urbanward in direction.[34] The rapid growth of the petroleum and moving-picture industries provided jobs to many. Numerous entrants into white-collar and service occupations attested to the expansion of the California economy. More recently airplane manufacturing and other new industrial developments have drawn job recruits from other areas.[35]

In agriculture, and in industry, job opportunities call forth seasonal as well as permanent relocations of workers. In some areas migratory routes are well defined, frequently traversing many States. In other areas workers tend to settle down in makeshift shelters near producing centers, operating from the home base in irregular migratory circuits.[36]

Every State in the Union contributes labor to every other State. More markedly, areas of meager opportunity send forth migrants pursuing temporary jobs provided by the seasonal rhythm of agricultural growth and industrial production. Migrants from Southern States annually follow the ripening harvest of crops along the Atlantic seaboard.[37] Seasonal workers from Kentucky, Tennessee, and other States of the Appalachian plateau regularly move into the agricultural and industrial sections of Michigan, Indiana, Ohio.[38] Each year thousands of Texas workers depart for the beet and vegetable crops and for the factories of these North Central States.[39] In the States of the far West, and particularly in California,[40] migrations take place in considerable numbers to conform the labor supply to the varying demand.

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[29] F. M. Vreeland and E. J. Fitzgerald, Farm City Migration and Industry's Labor Reserve, Work Projects Administration, National Research project, rept. No. 1-7, Philadelphia, 1939, ch. III; Lorimer, New York Hearings of Select Committee, p. 12.

[30] U. S. National Resources Committee, op. cit., p. 105.

[31] Carter Goodrich and others, Migration and Planes of Living, 1920–34, Philadelphia, 1935, p. 4.

[32] Migration of Workers, Preliminary Report of the Secretary of Labor pursuant to S. Res. 298 (74th Cong.), U. S. Department of Labor, Washington, 1938, vol. I, ch. V (mimeographed). Goodrich and others, Migration and Economic Opportunity, op. cit., chs. VI–VIII, Interstate Migration, Report of Select Committee, pp. 674–675.

[33] Migration of Workers, Preliminary Report of the Secretary of Labor, op. cit., p. 41.

[34] Bates, Los Angeles Hearings of Select Committee, p. 3071; W. T. Cross and D. E. Cross, Newcomers and Nomads in California, Stanford, 1937, p. 21.

[35] Bates, Los Angeles Hearings of Select Committee, pp. 3079 ff.

[36] Interstate Migration, Report of Select Committee, pp. 326, 344–345.

[37] Migratory Labor in New Jersey, report of the New Jersey Conference of State Departments on Migratory Labor, New York Hearings of the Select Committee, pp. 75 ff.; Interstate Migration, Report of Select Committee, p. 354; Proceedings of the Interstate Conference on Migratory Labor, Baltimore, Md., February 12–13, 1940; Atlanta, Ga., December 17–18, 1940.

[38] Chicago Hearings of Select Committee, pp. 977 ff., pp. 1106 ff., etc.; Interstate Migration, Report of Select Committee, pp. 353, 498.

[39] Oklahoma City Hearings of Select Committee, pp. 1798 ff.; pp. 1859 ff.

[40] "The greatest and most incessant seasonal migration in this country centers in California" (Migration of Workers, Preliminary Report of the Secretary of Labor, op. cit., p. 84).

> Agricultural workers move from the valleys of California to the Hood River Valley of Oregon and the Yakima Valley of Washington, the Arkansas Valley of Colorado, and the pea fields of Idaho, and to the Salt River Valley of Arizona. Peak demands in California and the Yakima Valley of Washington in September come 2 months after the maximum labor demands in Oregon, when the demand for labor in Oregon has fallen 30 percent from its peak in July. Maximum labor demand in Arizona occurs in November, when the requirements of agriculture in California, Oregon, and Washington are approximately at their lowest point. In California, for every 100 workers required in September, only 39 are needed in December; for every 100 workers required in the second week of September in the Yakima Valley, less than 2 are needed in the week of December. This is some index to the variations in labor demand that prompt the ceaseless migrations of thousands of agricultural laborers within the Western States.[41]

AS A PROCESS OF ECONOMIC ADJUSTMENT MIGRATION BENEFITS RECEIVING AREAS AS WELL AS SENDING AREAS, AND THEREBY ENHANCES THE NATIONAL WELFARE

The redistribution of population proportions the people to the economic resources of the country. The beneficial effects of the great migrations that took place between farm and city, 1920–30, have been pointed out as follows:

> In bettering themselves, the removal migrants of the twenties were increasing the earning level of the country as a whole. By moving to areas where their labor was in better demand they took a necessary step to correct partially the maldistribution of population, as compared to resources, which the changing economic structure had produced. * * * It is probable that real earnings were increased by at least 5 percent during the whole decade as a result of the transfer of both farm operators and farm laborers from agricultural to urban employment.[42]

A leading authority on migration has characterized the adjustive value of migration in these terms:

> Migration is not only a constitutional right of every American citizen; it is an economic necessity in the American economic system. This country is an economic unit with a predominantly national market. Industries, investments, goods, and labor respond to this economic and legal fact by crossing State lines at will. Such movements are necessary to develop, maintain, and stabilize the national economy. The economic order is a continually adjusting and readjusting equilibrium which presupposes a flow of industries to resources, a flow of goods to markets, and a flow of workers to developing industries.
>
> The causes of migration are, therefore, so fundamental and pervasive as to leave little expectation that the population may be immobilized.
>
> As new areas develop and old ones decline, workers must migrate in order to develop the new resources and to relieve the older communities of surplus workers. The "push" of stranded communities resulting from shifting work opportunities are accentuated by the "pull" of new developments in industry. After employment has shifted from one area or one type of industry to another, migration gives rise to fewer problems than would the continuance of stranded communities as the result of insufficient migration.
>
> Our population increase is slowing down, but migration retains its importance. Without great migratory movements we cannot equalize our unequal flow of population increase, redress our regional inequalities, balance the demand for labor between changing employment capacities, nor "use our human and material resources to the best advantage." We must remember that by large migration the frontier was settled; by foreign immigration the American labor supply was recruited; and it is mainly by spontaneous internal migrations that the future needs of population redistribution in the United States must be served.
>
> *Vagrancy laws to the contrary, the fact that a man has little or no money in his pocket is no valid reason for depriving him of his right to migrate across State lines.* The right to move may seem a poor substitute for real security, but it must not

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[41] Seymour J. Janow and William Gilmartin, Labor and Agricultural Migration to California, 1935–40. Monthly Labor Review, July 1941, vol. 63, No. 1, pp. 18–34.

[42] Migration of Workers, Preliminary Report of the Secretary of Labor, op. cit., pp. 39, 40. Footnotes in original omitted.

be forgotten that for many of our citizens it has proved the road to increased well-being.[43] [Italics supplied.]

The recent study of migration to the far West by the United States Department of Agriculture emphasizes that population changes and income changes have kept company. Indeed, relative income changes in some areas often have been proportionately higher than changes in the number of people.[44] California and the other States of the far West exemplify these trends.

Westward migration during the 1930's has more frequently been regarded as a movement away from depressed areas than as a population movement toward areas of industrial development and relative economic expansion. Yet the relative economic position of the far West in the Nation has kept pace with the expansion of its population. California, Oregon, and Washington combined had, in 1920, 5.26 of the national population and received 7.19 of the national income. In 1930 these three States contained 6.67 percent of the national population and accounted for 8.66 of the national income. By 1938 the three States had approximately 7.24 percent of the population of the Nation, and their share of the national income had increased to 9.34 percent. The per capita income position of the population in these three States has been substantially maintained in its advantaged position relative to the rest of the United States for the past two decades. (See table.) It is not possible to say with certainty what would have been the effect of the economy of the far West if no migration to this region had taken place in the depression decade of the 1930's. However, from evidence reviewed above, the extension of economic activities and the expansion of population seem to have a synchronous existence. What would happen to the population of the far West without migration can be quite accurately estimated.[45]

Percentage of the national population in the Pacific region (California, Oregon, and Washington) and percentage of the national income paid to persons in the Pacific region, 1919–38

Year	Pacific region (California, Oregon, and Washington)			Year	Pacific region (California, Oregon, and Washington)		
	Percentage of the national population [1]	Percentage of the national income [2]	Ratio of Pacific region per capita income to United States average per capita income		Percentage of the national population [1]	Percentage of the national income [2]	Ratio of Pacific region per capita income to United States average per capita income
1919	5.19	6.78	1.31	1929	6.53	8.73	1.34
1920	5.26	7.19	1.36	1930	6.67	8.66	1.30
1921	5.40	7.77	1.44	1931	6.74	8.54	1.27
1922	5.54	7.94	1.43	1932	6.81	8.82	1.29
1923	5.68	8.07	1.42	1933	6.88	8.93	1.30
1924	5.82	8.25	1.42	1934	6.95	8.56	1.24
1925	5.96	8.37	1.40	1935	7.02	8.74	1.25
1926	6.10	8.54	1.39	1936	7.09	8.96	1.28
1927	6.24	8.56	1.37	1937	7.17	9.11	1.27
1928	6.39	8.49	1.33	1938	7.24	9.34	1.29

[1] Population from U. S. Census. Change in population between census periods distributed evenly over the decade.

[2] National and regional income figures from the National Industrial Conference Board Studies in Enterprise and Social Progress, November 1939, pp. 116–117.

Source: U. S. Department of Agriculture, Migration Survey, San Francisco Hearings of Select Committee, p. 2314.

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[43] Dr. Rupert B. Vance, Probable Trend of Migration from the Southeast, Montgomery Hearings of Select Committee, pp. 414, 415.

[44] Janow, San Francisco Hearings of Select Committee, p. 2313.

[45] Ibid, p. 2314.

Summarizing the findings of the migration survey, the report concludes with respect to migration and economic opportunity:

> Income data clearly indicate the Western States as affording more per capita opportunities than the areas from which the majority of the migrants have come. As the great majority of newcomers show every indication of remaining in the West it is clear that the alternative action of returning to the areas from which they migrated is not going on because the far West is a more hospitable environment than the area from which they came.
>
> Then from the point of view of the migrants and from considerations of national welfare, westward migrations during the 1930's can probably be regarded as generally beneficial. Removal to the West has resulted in a larger proportion of the population of the Nation living in a region of higher per capita income.[46]

The areas of meager opportunity from which people migrate in large numbers are generally characterized by low levels of living and high birth rates. Opposite conditions exist in areas of considerable immigration. States with large rural population have higher birth rates than those predominantly urbanized and industrialized. Farm families are producing children twice as fast as the city families and in numbers far above their replacement needs. The urban population as a whole at present is failing to replace itself.[47] Farm-city migration is necessary to make up this deficit. Throughout the history of our Nation such migration has probably contributed half of the urban population.[48]

In California we have already noted that migration, largely to urban centers, has played the leading role in the population growth. California has one of the lowest birth rates of any State in the Union. In terms of the number of children under 5 years of age per 1,000 women aged 20–44 years, California ranks at the bottom.[49] With certain assumptions regarding birth and death rates, population trends for the future can be estimated. If no people were to enter or leave California at all, the total population would have already begun to decline by 1940, and it would be less in 1950 than it was in 1935.[50]

MIGRANTS HAVE INITIATIVE, YOUTH; ARE HIGHLY EMPLOYABLE

At a time when the complex factors making for economic change and labor mobility were less well-known, migrants were often regarded as people with psychological or moral quirks.[51] It is now a recognized fact that migrants are normal Americans, possessing initiative and determined to improve their lot by moving.[52] Large numbers of them are in families, uprooted, dispossessed, seeking to make a new start.[53] Migrants are younger, on the average, than the general working population. They center in the age groups most highly employable.[54] As stated in a report on transients by the California Relief Administration:

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[46] Janow, San Francisco Hearings of Select Committee, p. 2321. Footnotes in original omitted. "California has not begun to attain its potentialities for population, agriculture, foreign trade, and industry. There are new frontiers right in the United States for new industries and higher standards of living for all the people. The West still offers a challenge." (San Francisco Daily News, editorial, May 11, 1939.)

[47] Interstate Migration, Report of Select Committee, p. 284; Lorimer, New York Hearings of Select Committee, p. 13; Lively and Taeuber, op. cit. ch. III; United States National Resources Committee, op. cit. pp. 112, 133–134.

[48] Dorn, op. cit.

[49] Janow, San Francisco Hearings of Select Committee, pp. 2314–2315.

[50] Ibid.

[51] John N. Webb, the Migratory—Casual Worker, Works Progress Administration Research Monograph VII, Washington, 1937, pp. 2, 19; Interstate Migration, Report of Select Committee, p. 300.

[52] Interstate Migration, Report of Select Committee, p. 9; Webb, Migrant Familes, op. cit., p. XVI; statement of Hon. Frances Perkins, Secretary of Labor, Washington Hearings of Select Committee, pt. 8, p. 3330; testimony of Philip E. Ryan, ibid., p. 3093; statement of Myron Falk, executive secretary, Louisiana Council on Migratory Labor and Transients, Montgomery Hearings of Select Committee, p. 678.

[53] "The migrants are old-stock Americans, hard workers, used to grubbing the soil against adversities. If put to work, they will be self-supporting, rear children, produce and buy goods, increase the general prosperity." (San Francisco Daily News, editorial, May 11, 1939.)

> Study of most of the matter dealing with transiency discloses the astonishing and persistent factor that persons in the youthful prime of working life—between the ages of 24 and 35—constitute the backbone of the transient load. * * * Another consistent factor from which some comfort may be drawn is the willingness to work on the part of an overwhelming number of the transient population. * * *[55]

Those who are presented with the actual or potential burden of caring for destitute migrants frequently contend that persons migrate for purposes of obtaining relief.[56] Findings of impartial students and welfare workers do not support this contention.[57] Since most States impose complicated and lengthy residence requirements before giving relief, it could be argued with equal justification that fear of losing relief restrains people from moving.[58] People move in search of jobs. Failure to find employment in the new community may force them to seek public assistance.

Migrants to California in the 1930's were drawn from all sections of the Nation and from all walks of life. They represented, with minor exceptions, a cross section of the occupational structure in both the States of origin and in California.[59] In this wise they were responding to differential opportunity as between California and the States of origin. In California a certain amount of occupational shifting took place to more closely conform the migrant population to the labor needs of the State.[60] Many migrants who previous to moving had been on relief were able to improve their position by finding employment in California. Others were not so fortunate and had no recourse but to seek public aid. These less fortunate people were predominantly in the agricultural and less-skilled occupations, reflecting the fact that the burdens of a declining economy fall with the heaviest impact on the least advantaged sectors of the economy.[61] The Department of Agriculture migration survey found that—

> Of the male family heads who, before migration, were unemployed, on Work Projects Administration, or receiving relief, 36 percent were reported to be still in these groups in California. Twenty-one percent of the former farm laborers, 19 percent of the unskilled laborers, and 16 percent of the former farmers were reported as unemployed, on Work Projects Administration, or on relief in California. In contrast, only 7 percent of the former clerical workers and 3 percent of the former professional persons were reported as unemployed, on Work Projects Administration, or receiving relief in California. By this index, the agricultural and unskilled labor groups were the least successful in establishing themselves in California.[62]

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[54] Migration of Workers, preliminary report of the Secretary of Labor, op. cit., p. 15; Webb, Migrant Families, op. cit., pp. 97, 98, 108; Webb, the Transient Unemployed, op. cit., p. 25; D. S. Thomas, Migration Differentials, Social Science Research Council Bulletin 43, New York, 1938, p. 11; Lively and Taeuber, op. cit., p. 15.

[55] California State Emergency Relief Administration, Transients in California, San Francisco, 1936, pp. 287, 288 (mimeographed).

[56] See appellee's brief, dated April 28 1941, pp. 16–17.

[57] Interstate Migration, Report of Select Committee, p. 9; Lively and Taeuber, op. cit., p. 132; Webb, Migrant Families, op. cit., p. 51; Cross and Cross, op. cit., p. 19; Ralph Astrosky, director, Division of Shelter Care, Department of Welfare, New York City, New York Hearings of Select Committee, p. 201; Charles Alspach, Washington Hearings of Select Committee, p. 4234; Dorothy B. de la Pole, staff associate, National Travelers Aid Association, Chicago Hearings of Select Committee, p. 939; Joel D. Hunter, general superintendent, United Charities of Chicago, Chicago Hearings of Select Committee, p. 948.

[58] Testimony of Neil H. Jacoby, chairman, Illinois Emregency Relief Commission, Chicago Hearings of Select Committee, pp. 823–824; Dorothy B. de la Pole, ibid, p. 933.

[59] Interstate Migration, Report of Select Committee, p. 308; Janow, San Francisco Hearings of Select Committee, pp. 2299 ff.

[60] Ibid.

[61] Varden Fuller, Employment of Migrants As Hired Laborers in Western Agriculture, San Francisco Hearings of Select Committee, p. 2377.

[62] Janow, San Francisco Hearings of Select Committee, p. 2311.

WITHIN RECENT YEARS WIDESPREAD UNEMPLOYMENT AND DESTITUTION HAVE AFFECTED MIGRANTS WITH SPECIAL SEVERITY

The economic depression beginning in 1929 was unprecedented in the incidence of its impact. Unemployment mounted to staggering proportions. The number of unemployed persons was estimated to reach 16,000,000 at one time in 1933.[63] The total never fell below 12,000,000 in any year between 1930 and 1935. In 1937, after business revival and recession, a national census of unemployment recorded approximately 10,000,000 persons out of work.[64] Even today, when industrial expansion in the national-defense program is proceeding apace, there are still probably 5,000,000 persons without jobs.[65]

Addition of family members and dependents to the numbers estimated above can only suggest the extent of suffering and privation endured by American families. Relief cases multiplied as the meager resources of unemployed wage workers were exhausted. In July of 1933 almost 4,000,000 families, totaling over 15,000,000 persons, were forced on public relief rolls. The terrible winter of 1934–35 found 20,000,000 persons, or one-sixth of the Nation's population, dependent on relief.[66]

This court stated in 1937 when sanctioning the power of the State to legislate a wage for the minimum necessities of individuals:

> We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. It is unnecessary to cite official statistics to establish what is common knowledge through the length and breadth of the land.[67]

Income data gathered in 1935–36 show that of the 29,000,000 families in the United States, 14 percent received less than $500 during the year, 42 percent received less than $1,000 and 65 percent received less than $1,500. Considered in terms of consumer units (families and single individuals), one-third of the Nation received incomes of less than $780 during 1935–36. Four million families and single individuals in this lower third received relief during the year, but over 9,000,000 families and single individuals in this lower third, subsisting on incomes below any minimum standard of health and decency, received no relief whatever.[68]

The national character of unemployment and destitution was evidenced early in the depression by the need for Federal assistance. Traditional methods of relief-giving by local public and private welfare agencies were hopelessly inadequate to cope with the destitution attendant upon mounting unemployment. Private, voluntary contributions gave way in large part to public funds supplied to local communities by State emergency relief administrations. "By 1932, however, the number requiring relief had unquestionably reached such proportions in many States that Federal assistance was necessary to prevent rioting, bloodshed, and actual starvation." [69] Loans were first made to States and municipalities to help finance relief; these were later supplanted by outright grants, administered by a Federal agency.[70]

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[63] H. A. Millis and R. E. Montgomery, Labor's Risks and Social Insurance, New York, 1938, p. 19.

[64] Ibid., pp. 19, 20.

[65] Statement of Corrington Gill, Assistant Administrator, Work Projects Administration, Washington Hearings of Select Committee, pt. 16, p. 6486.

[66] Millis and Montgomery, op. cit., pp. 56, 57.

[67] *West Coast Hotel* v. *Parrish* 300 U. S. 379, 399 (1937).

[68] U. S. National Resources Committee, Consumer Incomes in the United States, Washington, 1938, pp. 2, 9.

[69] Millis and Montgomery, op. cit., p. 101.

It has been said of the American people that they will not stand still and starve.[71] Unemployment during the 1930's started great distress migrations. Rural-urban movements were reduced in volume, but to the population dammed up on farms were added newcomers fleeing from industrial unemployment.[72] Millions of persons took shelter in subeconomic retreats, subsisting on poor lands, or eking out a miserable living as migratory wage workers. A leading student of population has generalized the migration trends of the 1930's in these terms:

> From 1930 to 1940, migration has been in large a movement from areas of high productivity but heavy unemployment to areas of lower productivity but greater security, provided by poorly paid regular or part-time employment, or through subsistence farming, or both. In other words, it has been the substitution of underemployment for the risk of unemployment. * * *
>
> Millions who have retreated in search of meager security have suffered a severe drop in level of family living, but they have not caused conflict or created special public problems. They have therefore attracted little attention. The same may be said of many young people coming of age in areas of meager opportunity, who would normally have migrated to more favorable situations but have been restrained by fear of failure to find employment.
>
> There has, however, been a counter movement, which has stirred public attention. People have burst forth from areas suffering from the slow rot of economic deterioration, without awaiting the assurance of real economic opportunity elsewhere—only to encounter new types of frustration. These people, fleeing an ever-deepening underemployment, have sought areas of greater opportunity and have, in many cases, found only unemployment. These are the "economic refugees" of our very imperfect economic order.[73]

The California migration in the past decade included many economic refugees, for, as we have noted, conditions at their worst in that State were still better than those from which many migrants came. Population displacement was particularly heavy in the Great Plains States.[74] A long train of economic disasters, intensified by drought conditions in the midst of the depression, accelerated the westward trek. The causes of this migration were analyzed by the Governor of California, as follows:

> The Dust Bowl migrants are for the most part casualties of change. *They are not vagrants or paupers or hoboes.* They are American citizens who have been thrown out of gainful employment and self-supporting occupations largely as a result of the profound dislocations which have taken place and are continuing to take place in American agriculture. These changes have to do largely with such matters as the displacement of workers through mechanization; the curtailment of crop acreage; the loss of export markets in agriculture; and numerous other factors. * * * It has been generally estimated, for example, that with restricted demand and increased efficiency, we can now produce the normal requirement for agricultural products with approximately one and a half million fewer workers in agriculture than were needed in 1929. * * * It has likewise been

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[70] Ibid., E. A. Williams, Federal Aid for Relief, New York, 1939; J. C. Brown, Public Relief 1929–39, New York, 1940.

[71] Lincoln Hearings of Select Committee, p. 1349 and passim.

[72] Interstate Migration, Report of Select Committee, p. 290; Lively and Taeuber, op. cit., chap. II; Vreeland and Fitzgerald, op. cit., ch. IV; W. S. Thompson, Research Memorandum on Internal Migration in the Depression, Social Science Research Council Bulletin No. 30, New York, 1937; U. S. National Resources Committee, Problems of a Changing Population, op. cit., pp. 105 ff.

[73] Lorimer, New York Hearings of Select Committee, p. 12. cf. the following: "The dramatic and pathetic spectacle of thousands of Americans in flight from abject poverty toward an unknown and unattainable security, such as occurs during a depression, confuses the social implications of migration and beclouds its economic function," (Collis Stocking, Bureau of Employment Security, Social Security Board, Reallocation of Population and the Defense Program, paper presented before the ninth annual meeting of the Population Association of America, May 17, 1941, printed in Washington Hearings of Select Committee, pt. 17, p. 6758).

[74] Interstate Migration, Report of the Select Committee, pp. 313, 323.

estimated that in the next decade technological changes may result in the displacement of another million and a half workers. The Russell Sage Foundation on February 10 of this year, as a result of its investigation, stated that within the immediate future an outgoing migration of from 1,500,000 to 6,000,000 people might be anticipated from 4 major depressed areas in the United States.[75] [Italics supplied.]

Destitute migrants who "break loose like the tumbleweed every year," [76] are blown by a wind that rose half a century ago. The Department of Agriculture migration survey concluded with regard to the westward flight from the Great Plains:

> In some respects, the migration to the far West during 1930–39 may be envisaged as a self-generating correction of an unwise distribution of population which took place in the absence of a national policy for migration. That section of the Middle West made up by the States of Oklahoma, Kansas, Nebraska, South Dakota, and North Dakota was the area which received the largest population increases in the Nation by internal migration during the period from 1880–1920. Much of this settlement was made on a foundation of a type of farming now generally recognized as unsuited to the area. The result of this unwise settlement can in part be seen in the substantial emigration from this region which took place during the depression decade of the 1930's; the population in each of these States was less in 1940 than it had been in 1930.[77]

The jalopy of the contemporary migrant became a too-familiar sight on the public highways.[78] Quarantine inspectors at the California borders began to keep count of these automobile families seeking haven in the State. From the middle of 1935, when the count was started, until the present, parties totaling more than half a million persons in need of manual employment entered California by motor vehicle. The vast majority of these were native white Americans in family groups.[79] Removal and seasonal migrations to California in the past 5½ years included many more persons than those enumerated by quarantine inspectors.[80] The border count of half a million needy migrants merely suggests the prevalence of distress and destitution among America's depression pioneers.[81]

Agricultural migrants to California during the 1930's comprised but a fourth of the migrating population.[82] We have noted, however, that they bore their full measure of hardship. In a sample of these families studied by the United States Department of Agriculture, it was found that:

> The net worth at the time of arrival of the typical migrant family included in this study was only slightly above $100; approximately two-thirds had less than $200. Of average net worth 38 percent was in cash 34 percent in the value of the car and the remainder in clothing, household goods, and incidentals.[83]

The migrants for the most part made direct and purposeful moves. The majority crossed intervening States without delay and settled in the California county of initial choice.[84] Their intense desire to find a home has found tragic expression in the peripheral slums and shacktowns that are springing up near California cities.[85] According to the Department of Agriculture migration study:

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[75] Statement of Hon. Culbert L. Olson, San Francisco Hearings of Select Committee, p. 2238.

[76] C. M. Evans, Oklahoma City Hearings of Select Committee, p. 1933.

[77] Janow, San Francisco Hearings of Select Committee, p. 2331. Footnotes in original omitted.

[78] E. J. Rowell, Drought Refugee and Labor Migration to California in 1936, Monthly Labor Review, December 1936, vol. 43, No. 6, pp. 1355–1363; Migration of Workers, preliminary report of the Secretary of Labor, op cit., ch. VI; Paul S. Taylor, Interstate Migration of Refugee Workers, Unemployment and Relief, hearings before a Special Committee to Investigate Unemployment and Relief, U. S. Senate, 75th Cong., 3d. sess., pursuant to S. Res. 36, vol. 2, appendix 17, exhibit 1, pp. 1595 ff.

[79] Janow and Gilmartin, op. cit.

[80] Ibid.; Report of migrant committee, California State Chamber of Commerce, San Francisco Hearings of Select Committee, p. 2757.

[81] Quarantine inspectors taking the border count enumerated automobile parties whose appearance and belongings obviously placed them in the group of those in need of manual employment.

[82] Janow, San Francisco Hearings of Select Committee, p. 2303.

[83] Fuller, San Francisco Hearings of Select Committee, p. 2374.

[84] Interstate Migration, Report of Select Committee, p. 325; Janow, San Francisco Hearings of Select Committee, p. 2290.

> * * * Relocating families employed in seasonal agricultural jobs have had to improvise the best shelters they could out of the very small means available to them. * * * Nevertheless, they represent endeavors to establish permanency by people who are trying to escape the hardships and the undesirability of a migratory and homeless existence.[86]

In short-distance moves near the home base or in longer migrations up and down the coast, the agricultural migrants attempt to piece together sufficient jobs to yield subsistence. There are more hired workers on farms in California than in most other States in the Union.[87] California agriculture requires large numbers of laborers for short-peak periods. It is extremely difficult, however, for migratory workers to dovetail seasonal agricultural jobs.[88] Opportunities in alternative nonagricultural employment are limited.[89] Consequently, employment is intermittent and earnings extremely low. Summarizing the conditions and prospects of migrant agricultural families in California, the Department of Agriculture survey states:

> Under present conditions of farm organization and as long as agricultural workers remain ineligible for social-security benefits, public assistance performs a very great function in the economic stability of farm workers. It must be emphasized, also, that public assistance as it is received, is equally a subsidy to farm operators who employ seasonal labor. Assistance received by workers operates as a subsidy paid by the public in general to farm employers inasmuch as a pool of labor is kept constantly available to work at modest wage rates.[90]

MIGRANTS HAVE BEEN TREATED AS CRIMINALS AND VAGRANTS, AND ATTEMPTS HAVE BEEN MADE TO BAR THEIR ENTRANCE INTO CERTAIN STATES

Large influxes of underprivileged newcomers to a community frequently create misunderstanding and conflict.[91] The interests of employers seeking great surpluses of labor for peak seasonal operations do not always coincide with the interests of other established residents who may feel the effects of job competition or of increased tax burdens for relief. It is not uncommon among employers themselves to help drive out of the community "tramps" and "bums" who, when needed for seasonal work, were solicited and accepted as useful citizens.[92]

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[85] Interstate Migration, Report of Select Committee, p. 326; Janow, San Francisco Hearings of Select Committee, pp. 2292, 2293; Carey McWilliams, chief, California State Division of Immigration and Housing, Housing Conditions Affecting Migrants in California, San Francisco Hearings of Select Committee, pp. 2541 ff.; Catherine Bauer, secretary, California Housing Association, The Housing of California's Agricultural Workers, San Francisco Hearings of Select Committee, pp. 2570 ff.

[86] Fuller, San Francisco Hearings of Select Committee, p. 2368.

[87] Testimony of Dr. Paul S. Taylor, hearings before the Subcommittee of the Committee on Education and Labor, under S. Res. 266, 76th Cong., 2d sess., pt. 47, p. 17227.

[88] California State Relief Administration, Migratory Labor in California, San Francisco, 1936, p. 49 (mimeographed); Migration of Workers, Preliminary Report of the Secretary of Labor, op. cit., pp. 85–86.

[89] Fuller, San Francisco Hearings of Select Committee, p. 2370.

[90] Ibid., p. 2376. Cf. the following conclusion of the California State Relief Administration study (Migratory Labor in California, op cit., p. 212): "Thus, we see California's second largest industry not only subsidized by relief funds, but responsible for untold human misery and human wastage. Not only are present relief expenditures and present suffering to be considered, but the insufficient and improper food, the improper conditions of living, the insufficient and improper schooling promise a human harvest which cannot but add further burdens to the State and the Nation."

Dr. Paul S. Taylor states: "There is a long tradition in California of the necessity of a large supply of labor available at low wages for short-time employment. It is as old as statehood itself. * * * This policy of 'hire and fire,' without responsibility for carrying the overhead cost of supporting their laborers between seasons is a contributory factor to that acute specialization which makes employment so highly seasonal and laborers so mobile." (Hearings before a Subcommittee of the Committee on Education and Labor, under S. Res. 266, 76th Cong., 2d sess., pt. 47, pp. 17288–17289.)

[91] Philip Ryan, Migration and Social Welfare, Russell Sage Foundation, New York, 1940, ch. V.

In former times many of California's seasonal enterprises relied upon a succession of alien groups who were obliged to accept substandard conditions of work and who were credited with a propensity to conveniently disappear when the season's work was done.[93] Native American citizens do not easily fit into the old pattern.[94] Seeking homes and jobs in California by the hundreds of thousands, they have been at times the object of a hostile and unreasoning sentiment in some quarters.

This sentiment has varied in intensity with the numbers of needy newcomers, and with the availability of funds or facilities for their care. It has found expression in measures designed to drive migrants from the State or to bar their entry. The futility of these measures is predetermined by the failure to recognize that no single State can insulate itself against great migratory movements initiated by convulsions throughout the entire economy. Indeed, if all States were to act concertedly in erecting barriers to the entrance of migrants from other States, destitution would be nailed down, but it would not be eliminated.

In practice, destitute migrants become pawns in a dreary game of shifting responsibilities traditionally known as "passing on." California, unable to "pass on" the unemployed, has passed them back, thereby "adding to their distress and to the hostility of other States." [95] Mounting relief burdens have motivated States to raise their statutory settlement requirements for public assistance.[96] Nonresidents receive temporary care at best, pending forced removal to their place of settlement. "Human beings are shifted around like so much cargo." [97]

States have exercised their police power on the mistaken assumption that problems economic in their origin can literally be handled by police methods.[98] In addition to enacting new restrictive statutes, old laws have been stretched to cover new conditions. Barriers to free movement have been built up on a foundation of "crime prevention." Vagrancy laws have been invoked against migrants in indiscriminate fashion. Justification for driving migrants from the borders of States has also proceeded under the guise of violations of penal statutes prohibiting the carrying of concealed weapons, evading the payment of railroad fares, operating motor vehicles without licenses, transporting into a State indigent persons or persons likely to become a public charge, and the like.[99]

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[92] Webb, The Migratory-Casual Worker, op. cit., p. 2. The author reports the comment of the Los Angeles Times on March 13, 1936, with reference to the Los Angeles police blockade of the California border in an attempt to rid the State of indigent transients: "If a labor shortage should develop later on, it would be easy to modify the regulations so that seasonal workers might be admitted. * * *" Webb further reports the sardonic comment of the San Diego Sun, March 23, 1936: "The only time a bum is expected to come to California is when we need him as a harvest hand. What right has he to come between seasons?" (The Migratory-Casual Worker, op. cit., p. 2, footnote 1.)

[93] Interstate Migration, Report of Select Committee, p. 379; Varden Fuller, The Supply of Agricultural Labor as a Factor in the Evolution of Farm Organization in California, hearings before a Subcommittee of the Committee on Education and Labor, under S. Res. 266, 76th Cong., 3d sess., pt. 54, exhibit 8762-A; pp. 19777-19898.

[94] Fuller, San Francisco Hearings of Select Committee, p. 2368. "The very nature of California's agriculture, which requires migration to secure employment, makes establishment of legal 'residence' and exercise of the suffrage difficult. In their efforts to achieve California citizenship, these native American migratory farm laborers, coming originally like the majority of us Californians, from other States, face obstacles erected by a hostile community. Officials raise the question whether living in a camp erected by the Federal Government to provide decent conditions for those who migrate to serve our crops can be accepted as legal residence for voting, even after all requirements of the law are met. Newspapers publish articles which can only have the effect of deterring migrants from exercising the right of suffrage. * * *" (Testimony, Dr. Paul S. Taylor, hearings before a Subcommittee of the Committee on Education and Labor, under S. Res. 266, 76th Cong., 2d sess., pt. 47, p. 17235.)

[95] Beecroft and Janow, op. cit., p. 483.

[96] Interstate Migration, Report of Select Committee, p. 650. See appendix A, charts showing residence requirements for settlement in the various States 1931-40.

[97] Justice Burr, delivering the opinion of the court in *Adams County* v. *Burleigh County* (291 N. W. 281 (1940)). See appendix I for full opinion.

[98] See Nels Anderson, Men on the Move, Chicago, 1940, p. 255; Ryan, op. cit., p. 56.

At times the exclusion of destitute outsiders has been inspired by executive action of State Governors. The road patrol of State police operating in Florida during the winter months of 1934, 1935, and 1936 was proclaimed and organized by the Governor of that State. Notice was served that no more transients would be admitted to Florida camps and that those trying to enter the State without jobs or visible means of support would be turned back. The Governor warned that those transients successful in entering the State would face "arrest, which would be unpleasant and unprofitable to all concerned." [1]

Acting on numerous complaints that it was undemocratic and unconstitutional to prevent United States citizens from passing at will from one State to another, and responding to the argument that a welcome should be extended to rich and poor alike, a new Florida Governor abolished the border patrol in 1937, saying:

> I don't think it's constitutional to tell a man he can't go from one State to another. Just because a man's poor and wants to find a job in Florida is no reason for keeping him out of the State. Why, some of the worst people that come to Florida in the wintertime are racketeers in fine limousines and Pullman cars. There are plenty of crooks in fine automobiles.[2]

Colorado, by executive order in April 1936, proclaimed martial law along a mile-wide strip of territory on the southern border and called out National Guardsmen—

> * * * to prevent and repel the further invasion of this State by any such aliens, indigent persons, or invaders, and to repel and return all such persons * * * to the State from which they shall have entered such area.[3]

According to two observers—

> The blockade extended from Utah to Kansas, with every entrance point from Oklahoma and New Mexico under the scrutiny of the guardsmen. The men had orders to stop all cars, busses, and trains with the exception of first-class limiteds to search them for "undesirables." Money and financial responsibility was the test laid down by Governor Johnson for entry into the State. This executive order was withdrawn after a few weeks, when "the Governor found it impossible to continue the policy." [4]

The zeal of public officials in keeping out destitute newcomers has been matched by private bodies and by self-constituted extra-legal authorities. The most dramatic example of such action was the abortive "bum blockade" set up in California by the Los Angeles Police Department with the support of the Los Angeles Chamber of Commerce and other organizations. Cooperation was sought from the railroad companies and permission obtained to search freight trains crossing the border. Sheriffs of border counties were contacted and requested to deputize Los Angeles police officers as sheriffs of these counties. Some counties agreed and others refused to deputize the officers, but officers from Los Angeles were sent even to those refusing.

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[99] See appendix J, excerpt on California border patrol from California State Relief Administration, Transients in California, San Francisco, 1936 (mimeographed).

[1] Florida Times-Union, December 7, 1934. For excerpts from files of the Florida Times-Union, and New York Times, relating to the border patrols at the Florida State line, during 1934, 1935, and 1936, see Appendix E, p. 40.

[2] New York Times, September 11, 1937. See Appendix E, p. 40.

[3] Beecroft and Janow, op. cit., p. 480. For full text of executive order see Appendix F, p. 43.

[4] Ibid. (Footnotes in original omitted.) For excerpts from files of Denver Rocky Mountain News relating to the border patrols at the Colorado State line during 1936, see Appendix G, p. 44.

By February 1936 it is reported that 125 police officers had been detailed to points of likely border entry by highway or railroad. The tragi-comic details of the border patrol activities are set forth in a survey made by the California State Relief Administration, printed in appendix J.

The stationing of Los Angeles police officers at the 16 border points evoked unfavorable publicity and protest from many public and private agencies or individuals.[5] Careful distinction was not made between residents and nonresidents nor between criminals and destitute persons.[6] Among those stopped and questioned by officers were two members of the California Senate.[7]

> The chief of police claimed that he was protecting the city [Los Angeles] from an influx of criminals, and stated that 65 percent of those stopped had criminal records. He admitted to a member of the [relief administration] survey staff that he considered anyone to have a criminal record if he had ever been arrested for vagrancy or spent a night in jail. He was not willing to allow a worker from the survey to examine the information in the office regarding the patrol.[8]

One John Langan, a California resident returning from a business trip to Arizona, sued the police chief of Los Angeles city in the Federal court asking that he be enjoined from "stopping, molesting, questioning, fingerprinting, arresting, or otherwise interfering with plaintiff's entering California, or with plaintiff's traveling in California, or with plaintiff's traveling between any of the States bordering upon California."[9]

A request from the Los Angeles Chamber of Commerce that the border-patrol activities of the police department be endorsed by the attorney general of California was refused. The attorney general held that Los Angeles police officers were not legally eligible for appointment as deputy sheriffs of other counties and that exclusion of certain classes from the State required legislative action.[10] He stressed United States Supreme Court dicta on the right of free ingress and egress to and from States and reminded the chamber of California's membership in the sisterhood of States.[11]

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[5] Janow and Beecroft, op. cit., p. 479; California State Emergency Relief Administration, Transients in California, op. cit., p. 261 (See appendix J, p. 58); Los Angeles Herald-Express. February 4 and 5, 1936. (See appendix C, p. 31.)

[6] Janow and Beecroft, op. cit., p. 474, footnote 15.

[7] California State Emergency Relief Administration, Transients in California, op. cit., p. 261. (See appendix J.)

[8] California State Emergency Relief Administration, Transients in California, op. cit., p. 261 (see appendix J). Cf. Mr. Davis' analysis of the motives for migration to California and the police experience with transients in his report on Transiency in Southern California (Los Angeles Hearings of Select Committee, pp. 3015, 3017):

"* * * There are only two sources of employment in this State: to wit: First, private industry and agriculture; second, public-works projects. We know that private industry and agriculture can readily recruit sufficient workers who are permanent residents of the State. The Federal Government requires that those working upon public-works projects be residents of the political subdivision sponsoring the project. Therefore, it may be readily concluded that the indigent transients invading California does no [sic] do so for the sole purpose of seeking employment, but also to forage his [sic] way, through criminal operations or otherwise, to sustain himself.

* * * * * * *

"Police experience indicates that a large percentage, over 50 percent in fact, of the incoming transients have previously been convicted of one or more criminal offenses, the remaining 50 percent present another large group of potential offenders."

[9] See appendix H, p. 50.

[10] The attorney general stated that provisions of existing laws subjecting persons to arrest immediately upon their entry into the State did not "confer upon peace officers the right to forcibly prevent such entry."

[11] The opinion of the attorney general concerning the legality of the border patrol is printed in appendix B, p. 29. Cf. the following: "Flaying critics of Los Angeles' swift war on jobless, penniless winter nomads, Mayor Frank L. Shaw today revealed a legal opinion by City Attorney Ray L. Cheseboro stating that the police reinforcements of the border patrol were authorized by the city's charter." (Los Angeles Herald-Express, February 5, 1936).

Los Angeles Police Chief James E. Davis, reporting in March 1936 on "indigent alien transients," claimed great success for the border patrol in terms of "millions of dollars" saved the State and the wholesale reduction of crime.[12] He recommended that stopping of transients be continued by certain State departments. In the middle of April Los Angeles police officers were withdrawn from border stations.[13]

The present Governor of California, in assessing the role played by the border patrol and subsequent attempts to bar migrants from the State, has said:

> When the border patrol was abandoned, an effort was made to get at the situation through legislative action, and in the 1935 session of the legislature, assembly bill No. 2459 was introduced. * * * This bill, if enacted, would have had the effect of preventing so-called paupers, indigents, and transients from entering the State. It might also be added, in this connection, that on January 23, 1939, assembly bill No. 1356 was introduced, which, if enacted, would have had the same effect. I have cited these early approaches to the problem that were made in California as indicative of its seriousness at that time. *The failure of the border patrol, waiving the question of its legality, is, of course, the best proof of the futility of all such measures.*[14] [Italics supplied.]

THE PLIGHT OF THE MIGRANT AS A NATIONAL PROBLEM HAS BEEN RECOGNIZED BY PRIVATE AND PUBLIC BODIES AND BY THE FEDERAL GOVERNMENT

The poverty and destitution characterizing migration in the 1930's made clear the national scope of the problem, and the futility of State or local efforts to achieve a solution by driving migrants from their border. Private welfare agencies had long been concerned with mitigating the harsh effects of the settlement laws. Their efforts were directed largely to improving the practices involved in the transportation of dependent persons to their place of legal settlement.[15] Early in the 1930's private agencies concerned with the care of transients were overburdened and the need for Federal assistance became imperative. Special studies undertaken in these years showed how widespread was the plight of the migrant and how great his need.[16]

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[12] The report is printed in the Los Angeles Hearings of Select Committee, pp. 2978 ff. See also Mr. Davis' report on Transiency in Southern California, December 1, 1937, ibid., pp. 3013 ff. For criticism of the accuracy and relevance of the data contained in the report on Indigent Alien Transients, see California State Emergency Relief Administration, Transients in California, op. cit., pp. 264. 265 (printed in appendix J).

[13] Mr. Davis reported that: "The following year [1936-37] the department was not in a position to carry on such an [State-wide] operation. Instead, the Los Angeles Police Department arranged to police the municipal boundaries of the city of Los Angeles, particularly at the points of ingress of the railways, to arrest all evaders of railroad fares and persons violating any of the sections of the vagrancy statute. Men were stationed on 24-hour watch at the points of ingress of the freight trains, who stopped and searched each train headed toward Los Angeles. During the period from October 29, 1936, to January 23, 1937, this detail arrested 2,558 railroad evaders and vag roamers. Those arrested, upon conviction and sentence, were placed at manual labor upon firebreaks, roads, and other public works of a similar nature. This program was a great deterrent to the influx of transients in the city of Los Angeles." (Indigent Alien Transients, Los Angeles hearings of Select Committee, p. 3018.)

[14] Hon. C. L. Olson, San Francisco Hearings of Select Committee, p. 2236. The legislative bills referred to by Governor Olson are reprinted in appendix D. Assembly bill No. 2459, introduced May 16, 1935 (amended in assembly March 31, 1939), is entitled "An act to prevent the entry into California of paupers, vagabonds, indigent persons, persons likely to become public charges, providing means for enforcing the same and prescribing penalties for the violation thereof, declaring the urgency thereof, and providing it shall take effect immediately." Assembly bill No. 1356, introduced January 23, 1939, is entitled "An act to prevent the entry into the State of California of paupers, vagabonds, and fugitives from justice, providing for enforcement of this act, and prescribing penalties for the violation thereof."

[15] See, for example, Jeffrey R. Brackett, The Transportation Problem in American Social Work, Russell Sage Foundation, New York, 1936.

[16] Committee on Care of Transient and Homeless, "After Five Years—the Unsolved Problem of the Transient Unemployed, 1932-37", May 1937, reprinted in New York Hearings of Select Committee, p. 52. Among these studies might be mentioned: Family Welfare Association of America, Care of the Homeless in Unemployment Emergencies, 1920; U. S. Department of Commerce, A Community Plan for Service to Transients, 1931 (prepared by National Association of Travelers Aid Societies); U. S. Children's Bureau, Memorandum on the Transient Boy, printed in Twentieth Annual Report of the Chief of the Children's Bureau, June 30, 1932.

> All over the land, along the right-of-way of the railroads, on the margin of towns, great and small, and on the city dumps, "jungles" sprang up where men and boys—and sometimes women and girls—lived in a hand-to-mouth, debasing existence, following a manner of life which could not be considered tolerable when compared with the vaunted standards of living of the American people.
>
> The spectacle of a native-born American from the Atlantic seaboard finding himself in California an unwelcome applicant for relief; or of the Negro born and reared in the Cotton States finding himself on the banks of the Hudson or the Monongahela, thrown out of a job as a houseman or a steel hand, with no legal right to help; these and other evidences of the dislocations of thousands of people from their home environment and normal ties brought to the point of germination the idea that if indeed the Union of States created a Nation, then, by virtue of that national unity, the responsibility was vested first in the National Government and then in the States to insure that no citizen of this Nation should be left without assistance in his time of need.[17]

Following a meeting of the National Conference of Social Work in 1932, the Committee on Care of Transient and Homeless was established to devise a constructive program for destitute migrants. The members of the committee were drawn from various national agencies concerned with "transiency or homelessness," from universities, from the field of social research, and from private life. These people set about the task of gathering and analyzing the available data on transiency. In January and March of 1933 they attempted an enumeration of homeless and transient persons. The 1-day census taken in March and covering 765 cities enumerated 201,596 nonresidents, distributed in every State of the Union but especially numerous in California, Florida, and the Southwest.[18] "The Committee in 1933 presented facts at congressional hearings on relief in support of its contention that the special problem of the transient or unsettled person was a Federal responsibility and that the needs could not be met without financial assistance from the Federal Government."[19]

The representations of the Committee on Care of Transient and Homeless bore fruit in the provision included in the Relief Act of 1933 that States could obtain additional grants from the Federal Government to aid needy persons lacking legal settlement in any one State or community.[20] The outlines of a "national program of relief to the homeless and transient destitute" were formulated by the Federal Emergency Relief Administration and communicated to all Governors and State emergency relief administrations. It was pointed out that "every State in the Union contributes in a greater or lesser degree to the problem of transiency in every other State"; therefore, the States should undertake in a constructive spirit to deal with a problem national in its implications, for which Federal funds were now available.[21] Transients were defined as needy persons less than 12 months in the State.[22]

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[17] Committee on the Care of Transient and Homeless, New York Hearings of Select Committee, p. 52.

[18] Committee on the Care of Transient and Homeless, New York Hearings of Select Committee, pp. 52, 53.

[19] Ibid., p. 53.

[20] Section 4 (c) of the Federal Emergency Relief Act of May 1933 (Public, No. 15, 73d Cong.) provided:

"That the administration may certify out of the funds made available by this subsection additional grants to States applying therefor to aid needy persons who have no legal settlement in any one State or community."

[21] Committee on Care of Transient and Homeless, New York Hearings of Select Committee, pp. 53–54.

[22] Since the term "legal settlement" was not defined in the Relief Act, and since the varying provisions of State settlement laws were impracticable as a basis for providing relief, the more or less arbitrary definition of a "transient" as a needy persons resident in the State less than 12 months was laid down. Three categories of the homeless population were distinguished: (1) Local homeless residents, (2) State homeless, more than 12 months in the State, (3) transient homeless, less than 12 months in the State. It was contemplated that the first two categories would be cared for under other sections of the act (See Webb, The Transient Unemployed, op. cit., ch. I).

By October 1934, the District of Columbia and every State except Vermont were operating transient services. Transient relief centers were set up in the large cities and along the main-traveled routes. Assistance given to needy transients included food, clothing, shelter, medical care, education and recreation, transportation to place of settlement, and useful work projects.[23] The maximum transient case load numbered about 200,000 unattached persons and 50,000 family groups.[24] Regarding the cost of the program from its inception through December 1935, it is reported:

> Total obligations incurred amounted to $85,779,319, covering materials, supplies, and equipment purchased, relief extended, and administration and miscellaneous costs.[25]

The Federal Emergency Relief Administrator authorized a State program for transients in California on September 19, 1933.[26] The prevalence of needy transients in California and the part that the State played in soliciting Federal aid are noted in the following statement by the Governor of California presented to the Select Committee on Migration:

> * * * A 1-day census of transients was taken on September 1, 1933, which indicated that at that time there were present in California approximately 101,174 destitute transients. Prior to this date a State-wide conference had been called on the transient problem, at San Francisco, by the State emergency relief commission for August 17 and 18, 1933. To indicate how serious the problem was at that time, it is sufficient to point out that the railroad having the largest mileage in California reported nearly a quarter of a million evictions of trespassers from trains within the State of California in the first 6 months of 1933. During this 7-month period, 49 trespassers had been killed and 117 others injured on this one railroad in California. The consensus at this conference was unanimous that Federal aid must be solicited and to this end California took the initiative in urging congressional action.
>
> The gravity of the situation in California was, of course, one of the important considerations that led to the creation of the Federal Transient Service, which went into effect in connection with the passage of the Federal Emergency Relief Act of 1933. During the period from May 12, 1933, until September 20, 1935, when the Federal Transient Service was discontinued, the rigor of the situation in California was considerably abated. How important this Service was in California is indicated by the fact that although California, according to the census of 1930, had only 4.7 of the total population of the Nation, it was found that the California case load of the Federal Transient Service accounted for about 13.5 percent of all transients aided by the Service. At times during this period the Federal Transient Service was caring for as many as 38,815 transients in California.[27]

With the liquidation of Federal transient aid, States began to set up border patrols and "bum blockades." In California some people justified these police barriers because Federal aid for relief had been withdrawn.[28] Public officials, overburdened with relief problems, kept soliciting aid from the Federal Government.

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[23] The operations of the Federal transient program are described in Interstate Migration, Report of Select Committee, pp. 596 ff.; Committee on Care of Transient and Homeless, New York Hearings of Select Committee, pp. 53 ff.; and in a special Round-table Hearing of Select Committee, Washington hearings, pt. 10, pp. 4217 ff. The operation of the Federal transient program in California is described in California State Relief Administration, Review of Activities 1933-35, San Francisco, 1936, chs. VIII, IX.

[24] Webb, The Transient Unemployed, op. cit., p. 1; Williams, op. cit., p. 148. A study of the Federal Transient Program states: "No accurate measure of the number of persons who actually constituted the transient army is available. The peak registration for 1 month was reached in August 1934, a total of 395,384 unattached individuals and 16,232 family groups being reported for that moment. At no time did the midmonthly census exceed that of February 1935, when the record stood at 300,460." (Committee on Care of Transient and Homeless, New York City, May 1937, New York Hearings of Select Committee, p. 50).

[25] Monthly report of the Federal Emergency Relief Administration, December 1, through December 31, 1935, p. 79, cited by Committee on Care of Transient and Homeless, New York Hearings of Select Committee, p. 57.

[26] California State Emergency Relief Administration, Transients in California, op. cit., p. 24.

[27] Hon. C. L. Olson, San Francisco Hearings of Select Committee, p. 2236. From the beginning of the Federal transient program through December 31, 1935, Federal grants to California for transient relief totaled almost $9,000,000. This does not include an additional final grant. See footnote 28 below (California State Emergency Relief Administration, Transients in California, op. cit., p. 30). Total unemployment relief expended in California from January 1, 1933, to December 31, 1935, amounted to $235,000,000, two-thirds of which came from the Federal Government (California State Relief Administration, Review of Activities, 1933-35, op. cit., p. 25).

> Throughout 1937 the problem became increasingly acute, with conferences being held on the problem of transient and migrant care in San Francisco, Tulare, San Jose, and Los Angeles in the summer, and numerous applications and petitions were sent to Washington for Federal assistance throughout the year.[29]

Despite the attempts at exclusion by the border patrol, and the drive against "squatter" and "jungle" camps that sprang up everywhere in the State, the transient army continued the westward march. The distress of migratory families, particularly those with rural background, was in part alleviated again by Federal assistance in the form of direct relief grants, migratory camps, and medical aid.[30] The role of the Federal Government in relieving California's transient problem through the Farm Security Administration camp program and in other respects was recently emphasized by the Governor of California:

> Yet despite all of the concerted activities, and despite the fact that, in the years intervening since 1931, thousands of migrants had been transported back to their place of origin, the influx into California continued. The emergency of 1937 was, in fact only abated by prompt and effective action on the part of the Farm Security Administration which, in the spring of 1938, inaugurated its medical-aid program for indigent agricultural workers, and later in the same year began its program of grants-in-aid which, for the time being at any rate, relieved the pressure upon the State and county governments in California. Had it not been for this action on the part of the Farm Security Administration and its continuance to the present time, the situation would be much graver in California than it is today. From the preceding outline, it is, I think, apparent that California has been torn by agitation over the migrant issue more or less continuously from 1931 to date, with periodic crises which have arisen from time to time which have only been overcome in each instance by Federal intervention.[31]

Apart from the help extended by the Federal Government through the Farm Security Administration, benefits are generally withheld from migrants, as the following pages show. A comprehensive program of public assistance embracing migrants as well as nonmigrants remains to be formulated. The Federal Government, however, has recognized the importance of the problems of moving people by investigations and reports made subsequent to the Federal transient program. Thus, in 1937, Senate Resolution 298 (74th Cong.) resolved:

> That the Secretary of Labor is hereby authorized and directed to study, survey, and investigate the social and economic needs of laborers migrating across State lines, obtaining all facts possible in relation thereto which would not only be of public interest but which would aid the Congress and the States in enacting remedial legislation. The Secretary of Labor shall report to the Senate, with recommendations for legislation.

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[28] Los Angeles Times, February 7, 1936, cited in Janow and Beecroft, op. cit., p. 483, footnote 15. Near the end of the Federal transient program in December 1935, the Federal Government made a "final transient grant" of $500,000 to California. On July 1, 1936, unexpended balances available for transient aid amounted to $275,000. The State relief administration survey in 1936 commented: "That persons should have been allowed to starve or forced to exist in the way this survey has shown to be the case while there was this much money available in the hands of the State relief administration is hard to understand" (Transients in California, op. cit., p. 37.)

[29] Hon. C. L. Olson, San Francisco Hearings of Select Committee, p. 2237.

[30] Ibid.

[31] Ibid.

In conformity with this resolution and with the help of various private and public agencies[32] the Secretary of Labor tendered a report to the Senate (75th Cong.) under date of July 3, 1937.[33]

In 1939 and 1940 a subcommittee of the Senate Committee on Education and Labor made an exhaustive examination of the problems of agricultural migratory labor in California and in the Nation as a whole in investigating violations of civil liberties.[34]

In June of 1940 the Interdepartmental Committee to Coordinate Health and Welfare Activities presented a report on Migratory Labor to the President of the United States.

The House of Representatives passed a resolution on April 22, 1940 (H. Res. 63, 76th Cong.) providing—

> That the Speaker appoint a select committee of five Members of the House, and that such committee be instructed to inquire into the interstate migration of destitute citizens, to study, survey, and investigate the social and economic needs, and the movement of indigent persons across State lines, obtaining all facts possible in relation thereto which would not only be of public interest but which would aid the House in enacting remedial legislation, and shall have the right to report at any time.

The Select Committee held hearings in key cities throughout the Nation and presented its report to Congress April 3, 1941.[35] By further resolution Congress extended the work of the Select Committee and broadened its mandate to include the investigation of migration arising in connection with the national-defense program.[36]

THE NONRESIDENT IS GENERALLY EXCLUDED FROM PUBLIC AID

In 1935 the policy of Federal aid for relief was replaced by the social security and works programs. The abandonment of the transient program and the return of general relief to the States left the nonresident in his former disadvantaged position.[37] Old-age and other assistance rendered through the Social Security Board permitted the States to maintain or erect lengthy residence requirements.[38]

The Federal Work Projects Administration laid down the policy that equal opportunity in project employment be given to residents and nonresidents; however, the certifying procedures were handled through the State welfare agencies, which excluded persons lacking settlement in the State or political subdivision.[39] Similar discrimination against nonresidents was manifest in other programs involving the expenditure of Federal moneys.[40]

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[32] These included the Resettlement Administration, the Social Security Board, the U. S. Department of Labor, the U. S. Public Health Service, the Works Progress Administration, the Continuing Committee of the Interstate Conference on Transients and Settlement Laws, the Council of State Governments, the Social Science Research Council, and the National Committee on Care of Transient and Homeless (see California State Relief Administration, Transients in California, op. cit., p. 289).

[33] No funds were appropriated for the investigation, and the report was not printed. Excerpts are printed in the Washington Hearings of Select Committee, part 10, p. 4085 ff.

[34] Violations of Free Speech and Rights of Labor, hearings before a Subcommittee of the Committee on Education and Labor, U. S. Senate, pursuant to S. Res. 266, 74th Cong., vols. 46-77; supplementary hearing, vols. 1-3.

[35] H. Rept. 369.

[36] H. Res. 113, 77th Cong. The committee is now known as the Select Committee Investigating National Defense Migration.

[37] Interstate Migration, Report of Select Committee, pp. 601 ff.; Ryan, Migration and Social Welfare, op. cit., pp. 54-55; Janow and Beecroft, op. cit., p. 478; California Relief Administration, Review of Activities 1932-35, op. cit., pp. 199-200.

[38] Testimony of Miss Phyllis Osborn, regional representative of the Bureau of Public Assistance, Social Security Board, Kansas City, Mo., Oklahoma City Hearings of Select Committee, p. 2175.

[39] Fred R. Rauch, Acting Commissioner, Federal Works Agency, Work Projects Administration, The Relationship of the Work Projects Administration to Migrant Families Seeking Work, Washington Hearings of Select Committee, pt. 9, pp. 3641 ff.

[40] See The Nonresident and Federal Aid, Washington Hearing of Select Committee on National Defense Migration, July 21, 1941.

Every year the Federal Government disburses billions of dollars to the States for various types of aid, including grants for road building, for certain educational purposes, for public health work, for aid to aged, blind, and dependent persons, for the administration of unemployment compensation and employment service. The Federal Government also makes payments directly to individuals in the form of surplus commodities, wages on Work Projects Administration, National Youth Administration, and Civilian Conservation Corps projects, benefit payments for crop reduction and soil conservation, assistance to needy farm families, etc.[41] From July 1, 1933, until June 30, 1939, selected Federal expenditures (not including loans) in the State of California totaled about 1½ billion dollars.[42]

For the fiscal year 1939 alone California participated in these moneys in the amount of $192,000,000; 28 million Federal dollars were devoted in 1939 to the "assistance, employment, security, health, and welfare" of California citizens, 128 millions for general relief and work programs, 21 millions for agricultural aid, and 15 millions for "all other" types of aid.[43]

Notwithstanding the facts that nonresidents are citizens of the United States, and that these moneys are drawn from the wealth and income of the whole Nation, nonresidents are denied the privileges of State citizenship by States receiving bounty from the Federal Government.

Public assistance provided by State and local funds is equally withheld from the nonresident.[44] Since 1931, California has required that county aid to indigents be limited to those lawfully resident in the State for 3 years and in the particular county for 1 year.[45] The Unemployment Relief Act of 1940 provides that persons entering the State after June 1, 1940, are not eligible for relief benefits under the State relief administration until 5 years of continuous residence have been completed; those entering the State prior to that date must have 3 years of residence.[46] The only relief available to needy newcomers are the meager hand-outs of the private charitable agencies or the limited assistance rendered through the Federal Government.[47]

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[41] Fiscal Capacity of the States: A Source Book, U. S. Federal Security Agency, Social Security Board Bureau of Research and Statistics, Memorandum No. 43, 3d ed., revised 1940. See also D. S. Gerig, Jr., The Financial Participation of the Federal Government in State Welfare Programs, Social Security Bulletin, January 1940, vol. 3, No. 1, pp. 21–33.

[42] Consolidated State Reports of Selected Federal Expenditures July 1, 1933–June 30, 1939, compiled by Office of Government Reports, Statistical Section, October 1940, Rept. No. 9—1933-39, p. 2.

[43] Fiscal Capacity of the States: A Source Book, p. 32, table 6.

[44] See brief of amicus curiae, p. 12.

[45] A California statute of 1901 (ch. 239) providing "for the maintenance and support in certain cases of indigent, incompetent and incapacitated persons" required recipients of such aid to be continuously resident in the State for at least 1 year. In 1931 this law was amended (ch. 110) to require 3 years' residence in the State. In 1933 the indigent law of 1901 was repealed, and a substitute law was passed (ch. 761), providing among other residence requirements that a person to receive aid must have lived 3 years continuously in the State and 1 year in the county (see California State Emergency Relief Administration, Transients in California, op. cit., pp. 37 ff).

It might be noted that the State relief administration was not bound by the residence restrictions outlined above. It was contemplated in the statutory definition of eligibility for aid, that migratory workers and nonresidents be provided with unemployment relief by the State relief commission (Senate bill 940, ch. 675). Prior to 1940 a residence requirement of 1 year was set by commission rule (Summary of Social Security Welfare, and Relief Programs, California, submitted by Harrison S. Robinson, chairman of State-wide committee on the migrant problem, California State Chamber of Commerce, San Francisco Hearings of Select Committee, p. 2484). However, the State emergency relief administration noted in 1936 (Transients in California, op. cit., p. 287): "The relief administration has in large part, chosen not to expend its funds for relief of nonresident migratory workers." A report on the transient program of State relief administration in Los Angeles County, February 1939, states: "Since September 1935 there has been a gradual restriction of care to transients until we find, in February 1939, a program simply of emergency care pending verification of residence, authorization for return, and transportation (James B. Reese, Los Angeles Hearings of Select Committee, p. 2889).

[46] "In May 1940, the legislature adopted a statute providing that persons entering California after June 1, 1940, must have 5 years' continuous residence to be eligible, and that those who had entered the State prior to that date must have 3 years' residence, with the exception that anyone who had been certified as eligible for relief prior to February 18, 1940, is exempt from these residence provisions, and the further exception that temporary care can be furnished nonresidents for a period of 30 days pending verification of their legal residence and transportation thereto" (Robinson, San Francisco Hearings of Select Committee, p. 2484).

Undoubtedly the problems of aid to such persons are partly grounded in the uneven incidence of their influx into certain localities.[48] County budgets in these and other localities for certain types of welfare aid have increased in recent years. Over-all generalizations are not permissible, however, with respect to the relation of migration to the trend of public expenditures in California. According to a representative of the United States Department of Agriculture:

> * * * our studies reveal no direct relationship between distressed migration to California and public costs in general.[49]

Population growth and the steady extension of public services account for most of the increases. Thus it was found that—

> From 1930 to 1939 total disbursements for all counties in the State rose 27 percent during the same period that population was increasing 18 percent, resulting in a per capita increase of only 7 percent (from $63.31 per person in 1930 to $67.85 per person in 1939).
>
> It is interesting to compare these changes with those of the preceding decade, the twenties, during which period population increased by 65 percent and county disbursements by 198 percent, or a per capita increase of 80 percent (from $35.20 per capita in 1920 to $63.31 per capita in 1930). Nothing approaching such a rise in either population or public expenditures has taken place during the last decade.[50]

This finding accorded with a specific analysis of public expenditures in Yuba County, Calif., the jurisdiction in which the instant case originated.[51] Total county expenditures varied widely; increases in most items were relatively small (the exceptions were education and charities and corrections). Increasing proportions of county disbursements were derived from State and Federal subventions. Since 1936 Federal contributions have constituted about 10 percent of total county funds. Regarding the relation between increases in county public expenditures and migration during the past decade, two analysts from the United States Department of Agriculture state:

> * * * Nor can it be said that such increases as have been made during the decade are not solely the result of a general tendency to increase public services. Under normal conditions a 50-percent increase in population (such as occurred in Yuba County during the decade) should have resulted in much greater increases in expenditures. A 65-percent increase in California's population in the decade 1920–30 was accompanied by a 198-percent increase of all county disbursements, or a per capita increase of 80 percent. Yuba County's expenditures show no such relationship.[52]

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[47] "Mr. CURTIS: Governor, who takes care of the people who arrive here who cannot qualify for relief under State laws if they are hungry?

"Governor OLSON: I might say no one, except for such little aid as is given through our division of immigration and housing to try to get them placed through the Farm Security Administration, with its limited funds, and through local voluntary charities.

"It is entirely inadequate, of course. They are unable to draw the money appropriated by the legislature for unemployment relief under existing law" (Hon. C. L. Olson, San Francisco Hearings of Select Committee, p. 2249).

Data cited in appellee's brief show that more than three-fifths of the family heads on State relief rolls in Yuba County during February 1939, had been in the State more than 5 years (Appellee's brief, dated April 28, 1941, p. 16).

[48] Janow, San Francisco Hearings of Select Committee, pp. 2291–2292; Harrison R. Robinson, Summary of the Report and Recommendations, Statewide Committee on the Migrant Problem, California State Chamber of Commerce, San Francisco Hearings of Select Committee, p. 2474.

[49] Frederick Arpke, Recent Distressed Migration to California and the Trend of Public Expenditures, San Francisco Hearings of Select Committee, p. 2425.

[50] Frederick Arpke, Recent Distressed Migration to California and the Trend of Public Expenditures, San Francisco Hearings of Select Committee, p. 2423.

[51] Frederick Arpke and H. J. Voth, The Relationship between Changes in Public Expenditures in Yuba County, California, and Recent Migration into the County (files of Select Committee).

[52] Frederick Arpke and H. J. Voth, The Relationship between Changes in Public Expenditures in Yuba County, California, and Recent Migration into the County (files of Select Committee).

THE NATIONAL-DEFENSE PROGRAM CALLS FOR THE FREE MOBILITY OF THE ABLE-BODIED POPULATION

The unfettered right to migrate in search of economic livelihood needs no stronger justification than the requirements of the national defense program. Investigations of the Select Committee on National Defense Migration show that millions of Americans are on the move to fill the defense demand for workers in factory and field, mine and office.[53]

The four chief centers of defense activity in California have drawn almost 170,000 migrant workers since August 1940. Half of these have come from outside the State. Almost 100,000 of them have been placed in industrial defense jobs.[54] California employers are actively engaged in recruiting workers with special types of skills and work habits from various parts of the Nation.[55]

Many of the migrants are pursuing highly skilled migratory occupations (e. g., construction) from one defense center to another. Great numbers are disadvantaged people who were unemployed or underemployed during the depression and who are again responding to the call of economic opportunity. The core of destitution hardened in the 1930's is slowly dissolving. Distress migration is transforming into job migration.[56]

Defense-job opportunities are concentrated in the urban-industrial States. These States are not sufficient unto themselves. Labor shortages appear in specific industries, and labor needs are fulfilled from every part of the Nation.[57] Those workers with strategic occupational skills are being sought the length and breadth of the land. Others are being trained for the necessary skills in centers distant from their homes.[58] For purposes of training and job placement to meet defense demand, the Nation's workers comprise one single national labor pool.[59]

The President of the United States has called for the participation of all citizens and all groups in the national defense effort.[60] The Federal Government has undertaken "to see that each and every person in the Nation is employed at his or her maximum usefulness in the defense effort." [61]

All workers have not yet found jobs, and all destitution has been by no means banished. The least that is owing to those whose incomes and jobs have been removed through no fault of their own is the opportunity to reclaim their useful and productive place in society.

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[53] The Federal Security Agency estimates that half a million workers will have to be imported to 116 defense centers within a twelve-month period (Washington Hearings of Select Committee, pt. 17, p. 6743); U. S. Public Health Service estimates that there will be an influx of almost 2,500,000 civilians to certain military and industrial defense areas (Washington Hearings of Select Committee, pt. 17, p. 6690).

[54] Report of California Department of Employment, Washington Hearings of Select Committee, pt. 17 p. 6744.

[55] Ibid., p. 6750; testimony of Richard M. Neustadt, regional defense coordinator, Federal Security Agency, San Francisco, Calif., San Diego Hearings of Select Committee, p. 4950.

"The CHAIRMAN. In other words, where a year ago several States were trying to keep migrant workers out, now you are trying to get them in.

Mr. NEUSTADT. Yes. It is either a feast or a famine, and right now it is a famine in some instances * * *." (Ibid. p. 4957.)

[56] See testimony and exhibits of Arthur J. Altmeyer, Chairman, Social Security Board, Federal Security, Agency, Washington Hearings of Select Committee, pt. 17, pp. 6724 ff.

[57] "Workers are being selected from every known source and from all sections of the Nation to relieve the shortages that have developed" (report of Kentucky Unemployment Compensation Commission, Washington Hearings of Select Committee, pt. 17, p. 6769).

[58] Testimony of Sidney Hillman, Associate Director General, Office of Production Management, Washington Hearings of Select Committee, pt. 16, pp. 6343 ff.

[59] "The Employment Service is no longer recruiting men from a particular city or State. Each employment office is a recruiting center for the entire United States. Each employment office is a link in a national effort." (Altmeyer, Washington Hearings of Select Committee, pt. 17, p. 6728.)

[60] Executive Order No. 8802 of June 25, 1941.

[61] Altmeyer, Washington Hearings of Select Committee, pt. 17, p. 6728.

CONCLUSION

In our complex society, widespread unemployment and destitution are more than a charge upon the local community; the forces bringing them about are national and even international in scope. Are the victims of these impersonal economic forces to be labeled with the pauper's badge and deprived of the rights, privileges, and immunities of citizenship?

When 20,000,000 persons at one time are forced to seek public relief, to identify poverty with crime is to convict a nation. When a million persons, separated from their homes and jobs, half of whom are destitute or nearly so, migrate to California in the hope of bettering their lot, the attempt to bar them by statute is as fruitless as King Canute's exhortation to the ocean waves.

How tragic and how absurd would be the actual enforcement of the antimigratory statute against half a million migrants. How tragic and absurd, indeed, was the result when, in defiance of the Constitution of the United States and of the declared opinion of the State attorney general, police officers were stationed at the points of California border entry in a vain attempt to press back the irresistible tide.

A law which makes it a crime to bring persons into a State who are "indigent" (or likely to become a public charge) is necessarily prospective in its reference. Who can say in advance whether this person will succeed in finding employment and that one fail? Whether this person will subsist at the expense of the public and that one on the bounty of relatives?

If every State in the Union could prejudge the economic fate of these people and turn them away at its borders, where would they go? Where would the Duncans of America go?

APPENDICES

A. Charts showing residence requirements for settlement in the various States 1931–40.

B. Copy of opinion of U. S. Webb, former attorney general of California, on the legality of border patrol.

C. Copies of articles from the files of the Los Angeles Herald-Express relating to the border patrols at the California State line during 1935–37.

D. Copies of Assembly bills (California) No. 2459 and 1356.

E. Copies of articles from the files of the Florida Times-Union and New York Times relating to the border patrols at the Florida State line 1934–37.

F. Copy of executive order of Governor Edwin C. Johnson, Colorado, dated April 20, 1936.

G. Copies of articles from the files of the Denver Rocky Mountain News relating to the border patrols at the Colorado State line 1936.

H. Opinion of Stephens, District Judge, in the matter of *John Langan* v. *James E. Davis*, as chief of police of the city of Los Angeles, March 17, 1936.

I. Opinion of Burr, Judge, in the matter of *Adams County* v. *Burleigh County*, Supreme Court of North Dakota, 1940.

J. Excerpt on California Border Patrol from California State Relief Administration, Transients in California, San Francisco, 1936, pp. 243–266.

K. Compilation of all State antimigratory legislation, including exclusion laws and removal statutes.

APPENDIX A

CHARTS SHOWING RESIDENCE REQUIREMENTS FOR SETTLEMENT IN THE VARIOUS STATES, 1931–40

Residence requirements for acquisition of settlement in the various States, 1931

[No settlement laws are applicable to the District of Columbia]

2 months	3 months	6 months	No settlement laws, 1-year rule practiced or voting laws "assumed"	1 year	3 years	4 years	5 years	7 years	10 years	Not specified
Montana.	Wyoming.	Alabama. Idaho. Kansas.	Arizona. Arkansas. Colorado. Delaware. Florida. Kentucky. Louisiana. Maryland. Mississippi. Nebraska. Nevada. Oklahoma. Oregon. Washington.	California. Illinois. Indiana. Iowa. Michigan. Minnesota. Missouri. New York. North Carolina. Ohio. Pennsylvania. South Dakota. Utah. Virginia.[1] West Virginia.[1] Wisconsin.	South Carolina. Vermont.	Connecticut.	Maine. Massachusetts. New Jersey.	New Hampshire.	Rhode Island.	Georgia. New Mexico. Tennessee. Texas.

[1] A person migrating into the State could not obtain a settlement until he had resided there for 3 years, unless he was able to maintain himself at the time of migration.

Source: This table based on a Compilation of Settlement Laws of All States in the United States by Harry M. Hirsch, State department of social welfare, Albany, N. Y., 1931.

Residence requirements for acquisition of settlement in the various States, 1940

6 months	1 year period practiced, assumed, accepted, or fixed by welfare department	1 year	2 years	3 years	4 years	5 years	Not specified
Alabama. Mississippi.	Florida. Kentucky. Louisiana. New Mexico. Texas. District of Columbia. Tennessee. Washington.	Georgia. Iowa. Michigan. Missouri. Montana. Nebraska. New York.[4] North Carolina.[5] North Dakota. Ohio. Oklahoma. South Dakota. Utah. Virginia.[5] West Virginia. Wisconsin. Wyoming.	Delaware. Minnesota. Pennsylvania.	Arizona. Colorado. Idaho. Illinois.[2] Indiana. Nevada. Oregon. South Carolina. Vermont.	Connecticut.	California.[1] Kansas. Maine. Massachusetts. New Hampshire. New Jersey.[3] Rhode Island.	Arkansas. Maryland.

[1] 3 years required if residence began on or before June 1, 1940.
[2] Not retroactive and does not affect those already on relief on June 26, 1939.
[3] 1 year without interruption if immediately preceding May 4, 1936.
[4] 5 years required in certain counties.
[5] 3 years required if person was not self-supporting at time of entering State.

NOTE.—All States have additional restrictions which effect settlement.
Source: This table adapted from a Compilation of Settlement Laws, American Public Welfare Association, Chicago, 1939.

APPENDIX B

(Copy of opinion by U. S. Webb, former attorney general of California, on the legality of border patrol)

San Francisco, *February 18, 1936.*

Hon. Arthur G. Arnoll,
Secretary and General Manager, Los Angeles Chamber of Commerce,
Los Angeles, Calif.

My Dear Mr. Arnoll: I have considered with care your recent letter, in which you refer to and in a measure describe the plan, having the approval of the Los Angeles Chamber of Commerce, and which "has been worked out by the police department of the city of Los Angeles," having for its object the prevention, insofar as possible, of the coming to this State of indigent persons who will become a charge upon this State, and will to some degree, as you say, increase the probability of crime. Insofar as this object may be lawfully accomplished, it is worthy of unqualified approval, but organized government, neither State, county, nor municipal, should attempt the achievement of a laudable purpose by unlawful means.

The constitution of this State authorizes the creation of local governments, county and municipal, and those governments and their officers function within their respective territorial limits. The operation of one municipal government within the territorial limits of another is not countenanced or authorized. The operation of the government of one county within the territorial limits of another is not countenanced or authorized, nor can the efforts of one of such governments to discharge the duties which belong to another be defended.

The police of the city of Los Angeles have no jurisdiction beyond the city's territorial limits, and the police department of the city of Los Angeles is not authorized to interfere with or discharge the duties devolving upon police authorities of another government, municipal or county.

The independence of these several governments, each of the other, has long been recognized, and the instances where one of such has sought to invade the territorial limits of another have been fortunately of infrequent occurrence.

If the invasion by one of such governments of the domain of another and the effort there to discharge the duties of the local officers of such other government were permitted, it can readily be apprehended that the evils which might result in given instances would far outweigh any good that might be accomplished in other instances.

May I at this point quote a paragraph of your letter:

"The plan which has the approval of this chamber of commerce has been worked out by the police department of the city of Los Angeles, in cooperation with the sheriffs, not only of Los Angeles County, but of all border counties of the State; and this plan provides for the deputizing of officers of the Los Angeles Police Department in connection with border counties of the State by the sheriffs of such counties, with the consent of the boards of supervisors of these counties."

Passing the question of the incompatible character of the duties of a member of the police force of the city of Los Angeles and a sheriff of one of the counties of this State, we come at once to the question of the eligibility of a police officer of the city of Los Angeles to act as a deputy sheriff of any county in the State other than the county of Los Angeles.

Under provisions of the political code of this State no person is eligible to the position of a deputy sheriff in one of the counties of this State, except he be an elector of such county. Obviously the members of the police department of the city of Los Angeles are not electors of any county in the State save the county of Los Angeles.

The police officers of the city of Los Angeles not being eligible for appointment as deputy sheriffs in other counties, the sheriffs of such other counties may not legally so appoint them, with or without "the consent of the boards of supervisors of these counties."

No question is here made as to the powers that may be exerted within the municipality of Los Angeles by its police department, and no question is made as to what may be done elsewhere in aid of or in cooperation with the local officers of other municipalities or other counties of the State, so long as the law is not thereby violated.

Government, State, county, and municipal, should protect and preserve and defend general welfare, but this ultimate object should be accomplished through lawful methods. Government no more than the individual can justify the reaching of even proper ends through unlawful means.

Whatever may be lawfully done by the officers of one government in aid and support of the officers of another, in law enforcement and the preservation of general welfare may be approved.

The apprehension of any and every person falling within the scope of section 647 of the Penal Code by the local officers of the local government in which such persons are found, may be lawfully accomplished. If by arrangement between officers of the different governments such action can be aided, encouraged, and supported, such arrangements as do not violate the law are of course entirely justified and defensible, but beyond that which is lawful neither government nor its officers should go.

On November 24, 1931, at the instance of a committee of Los Angeles officials and citizens, a meeting was called by the Governor of this State to consider identically these same questions, and as a result of that meeting the officers of all border counties were communicated with, urged to the greatest activity, within lawful limits, in an effort to check the immigration to this State of those who would here become a public charge. One or more employment camps, as result of that determination, were established, and for some months maintained, and the evil was for a long period greatly checked, but the effort was not continued through the years, and I understand largely because of the cost which resulted, and perhaps in some degree as result of the false security felt because temporarily this invasion had been checked. That effort was entirely within the law, and in my judgment should have been continued, for the good accomplished greatly outweighed the cost of the effort. I sat in that meeting and this office advised much that was then and thereafter done.

I note your statement "that an official of your office in Los Angeles has raised the question as to the legality or constitutionality of this procedure."

You are there referring to the procedure as your letter outlines it.

This office has advised, as I have indicated in this letter, that members of the police department of the city of Los Angeles may not legally be appointed deputy sheriffs in other counties of this State. Further than that I think no member of this office force has gone.

For a long period this office has keenly appreciated the existence of the evils which your letter describes, and during all of that time has aided every proper effort to check this invasion, and our attitude in this regard has in no manner changed.

I note your closing paragraph, in which you state:

"I trust that we may have your cooperation in connection with this burden upon the taxpayers of the State," etc.

In reply to this suggestion, I state again, we have during the years that have passed given the cooperation of this office to every lawful effort to relieve the State and its people of this unjust burden, and such efforts will continue so long as the evil exists.

The plan which your letter describes presents still other and different questions. The outstanding question so presented is: How far may one State go in preventing the entry into such State of citizens of the United States resident of other States?

As between the States, the right of citizens to ingress and egress has very generally been recognized and upheld. Full recognition of this right was given and guaranteed to the residents of the colonies by the Articles of Confederation. Those rights were carried and continued by section 2 of article IV of the Constitution in the declaration that—

"The citizens of each State shall be entitled to all privileges and immunities of Citizens in the several States."

Almost 100 years ago Chief Justice Taney said:

"We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own States."

This language was quoted approvingly by Chief Justice Miller in *Crandall* v. *State of Nevada* (73 U. S. 49), and we find no conflicting utterances in any subsequent decision of the Supreme Court of the United States.

In *Paul* v. *Virginia* (75 U. S. 180), Justice Field said:

"It was undoubtedly the object of the clause in question to place citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness."

Some exceptions, however, have been repeatedly indicated. A State may undoubtedly protect itself from the incoming of persons afflicted with contagious diseases, of fugitives from justice, of persons convicted of crime, and of persons whom the State may deem dangerous to its peace or who would, upon their entry into the State, be subject to arrest and imprisonment by virtue of some existing statute of the State.

This power to prohibit, however, the entry of such persons rests in the government and is to be exercised through the legislative branch of the government. It is for the legislature to determine the classes who may be so prohibited. The power to so determine and to exclude without legislative action does not rest in the officers of the State. It is generally recognized that the officers of a government may exercise those powers only which have been by proper authority expressly delegated to them.

Section 647 of the Penal Code, to which we have referred, and other provisions of our statutes may subject persons coming across our borders to arrest immediately upon their entry into this State, but none of these statutes confer upon peace officers the right to forcibly prevent such entry.

I have gone somewhat at length into these matters in order to point out to you some of the difficulties which confront us. So far as we may rightly go in this matter the conditions warrant our going. In so dealing with the question, however, we should always keep in mind the relative rights, obligations, and duties of our sister States and of the citizens of the United States. Other States will not be expected to complain of that which we rightly do, but they may be expected to complain, and their right to complain must be admitted, of those things which we wrongly do.

In this as in other matters we should steadily keep in mind that we are one of the sisterhood of States, and while asserting our own rights we should recognize fully the rights of other States. As other States must do unto California, so must California do unto them, for such is the mandate of the Federal Constitution.

Very truly yours,

U. S. Webb, *Attorney General.*

APPENDIX C

Following are copies of articles from the files of the Los Angeles Herald-Express relating to the question of border patrols at the California State line during 1935–37:

[Herald-Express, May 17, 1935]

Assembly Body Backs Bill to Bar Indigents

Sacramento, May 17 (by United Press).—A bill which would make California a "closed corporation" to indigents as a means of relieving the unemployment situation was given a favorable recommendation today by the Assembly committee on unemployment.

Providing for the possible use of armed guards to prevent entrance into California of persons likely to become public charges, the measure represents one of the most drastic proposals yet submitted to the legislature.

Introduced by Assemblymen Kent Redwine, Hollywood, and William Moseley Jones, Montebello, the bill provides that "all paupers, vagabonds, indigent persons and persons likely to become public charges and all persons affected with contagious or infectious disease are hereby prohibited from entering the State of California."

Full powers would be granted the Governor to take whatever steps he thought necessary to enforce the proposed law during an emergency period ending July 1, 1939.

Under provisions of the measure it would be necessary for an individual to prove he was not subject to the restrictions before he would be permitted to enter the State.

Pointing to the steady arrival of persons without employment or resources, the authors said that "if this influx continues social and economic rehabilitation may be impossible."

The effort to isolate California in this respect grows out of the tremendous influx of population which occurred during the gubernatorial campaign of 1934. Thousands of people, attracted by the promises of relief made in the bitter campaign, flocked to California, making its relief problem one of the severest in the Nation.

[Editorial, Herald-Express, May 21, 1935]

Extremely important to the welfare of this State and its citizens is a measure that will come up in the California Legislature for action during the present week.

It is known as the Jones-Redwine bill, and it is intended to keep outside our borders the horde of indigent persons constantly invading this State and becoming public charges on our already heavily overloaded ability to extend charity.

Naturally our people are extremely sympathetic with those who are unable to gain a livelihood, wherever they may be. At the same time, it is a bounden duty for each State to care for its own needy, and everybody knows we have more than our proportionate share of such unfortunates now.

This is one measure that contains no politics. The authors of the bill are as far apart in political thought as the poles—one a conservative Republican and the other a leader of the epic Democrats.

Both these men realize the importance of relieving the citizens of this State from any further load, and hence in their measure they seek to bar entry to paupers, vagabonds, indigents, persons afflicted with contagious and infectious diseases, and those likely to become public charges.

In a ruling by the United States Supreme Court, as cited by Maj. Walter Tuller, it remarked: "It may be admitted that the police power of a State justifies the adoption of precautionary measures against social evils. Under it a State * * * may exclude from its limits convicts, paupers, idiots, and lunatics, and persons likely to become a public charge * * * a right founded * * * in the sacred law of self-defense."

California cannot afford to become known as the "poorhouse of the Nation." It cannot afford it financially, because our extreme resources are now being taxed to support the great number of unemployed and needy citizens we already possess.

Nor can California afford it merely as a matter of reputation nor because of the lowering of standards of living which would inevitably follow such a condition.

Yet such a fate lies ahead of the Golden State unless the legislature acts promptly and decisively to keep out the multitudes of indigent whose eyes may now be turned in this direction.

The bill with a tentative enforcement limit of July 1, 1939, requires all persons seeking to enter California to establish affirmatively their ability to support themselves and makes it the duty of government to establish regulations for enforcing the law.

This proposed act is distinctly emergency legislation, and it should be put through all the necessary stages of passage as quickly as possible.

[Herald-Express, August 24, 1935]

Stay Away From California Warning to Transient Hordes

San Francisco, August 24.—Indigent transients heading for California today were warned by H. A. Carleton, director of the Federal Transient Service, "to stay away from California."

Carleton declared they would be sent back to their home States on arrival here due to closing of transient relief shelters and barring of Works Progress Administration work relief in the State to all transients registered after August 1.

"California is carrying approximately 7 percent of the entire national relief load, one of the heaviest of any State in the Union," said Carleton. "A large part of this load was occasioned by thousands of penniless families from other States who have literally overrun California."

Carleton estimated the transient influx at 1,000 a day.

[Herald-Express, December 11, 1935]

Urge Prison Camp Hard Labor for "Boxcar Tourists"

As a means of keeping indigent transients out of Los Angeles, prison camps, at which convicted vagrants would be put to hard labor, might solve much of the city's problem with this type of "tourists," the Los Angeles Chamber of Commerce today declared in a communication to the city council.

The chamber declared that the question of caring for indigent transients is becoming increasingly more difficult and that establishment of the hard labor camps might have the effect of slowing up "this invasion." The council referred the matter to the police commission for recommendation and report.

[Herald-Express, February 4, 1936]

Indigents Barred at Arizona Line

While a tumultuous row was raging in city council over Police Chief James E. Davis' "expeditionary force" of policemen to halt the indigents over California's far-flung borders, the lid was successfully clamped on the Arizona-California line today.

The spectacular row in the council broke out when Councilman P. P. Christensen, consistent critic of Davis, introduced a resolution demanding by whose authority the police chief was sending 136 of his "coppers" to the State line "trenches."

At the same time Deputy Chief Homer Cross said the entry ports on the Arizona boundary had been blocked against transients in an effort to halt the "flood of criminals" and divert the stream of penniless transients.

Within 3 more days, Cross estimated, the blockade would be similarly effective on the Oregon and Nevada lines, abutting California territory.

The skirmish began right after Councilman Evan Lewis took the floor to argue in favor of Christensen's resolution.

Meantime from Sacramento to Phoenix, Ariz., the reverberations resounded. At the California capital Deputy Attorney General Jess Hession declared he believed Davis' methods illegal. Governor Frank F. Merriam withheld comment but State Senator Thomas Scollan, who had brought about defeat of an indigent-barring law at the last session of the legislature, characterized the "expeditionary forces" as "damnable, absurd, and asinine."

At Phoenix, Attorney General John L. Sullivan caustically declared if California tried to "dump" indigents back on his State, he would take swift action in reprisal.

In Los Angeles, Councilman Earl C. Gay, also took the floor and hotly opposed Lewis and Christensen. "As usual," Mr. Gay said, "Mr. Lewis is talking about something he knows nothing about." His face flushed and making no effort to hide his indignation, Councilman Lewis leaped to his feet. His first remarks were drowned by the gavel of Council President Robert L. Burns, who tried to leave the floor to Gay. Lewis remained on his feet and continued to shout as Burns loudly pounded for order. Half a dozen other councilmen tried to gain the floor. Gay then resumed his argument, insisting that the action of the police chief probably was dictated by the police commission.

ASKS LEGAL OPINION

The Christensen resolution was amended and sent to the city attorney's office requesting that official's legal opinion on the following points:

1. Legality of the action taken by the police commission in sending the "expeditionary force" to the border.
2. Jurisdiction of the council over the matter.
3. Has the city the legal right to expend city funds for salaries and expense accounts of police officers assigned to police duties outside the city boundaries?
4. Are the pension rights of police officers assigned to such duties valid in event any such officers are killed or injured on duty?
5. Has the police commission legal authority to detail policemen to police duty on the various State border lines, as contemplated in their recent assignments?

ORDERS OUTLINED

"Tactical orders" under which the city police were seeking to dam the tide of trouble at the border were outlined by S. L. Harman, assistant secretary of the Los Angeles Chamber of Commerce. He said police and civic authorities were seeking to stop at the State line persons riding trains without paying fares; give these persons the option of leaving the State or serving jail terms; and finally, to discourage from entering California all auto parties without apparent sources of support.

In the sieve of the widespread border patrol, the officers, by fingerprinting methods, expected to catch or at least keep out of California a considerable number of wanted criminals, Harman said.

[Los Angeles Herald-Express, February 5, 1936]

RULE GUARD AT BORDER LEGAL

Flaying critics of Los Angeles' swift war on jobless, penniless winter nomads, Mayor Frank L. Shaw today revealed a legal opinion by City Attorney Ray L. Chesebro stating that the police reinforcements of the border patrol were authorized by the city's charter.

Meantime, against hesitant cooperation and even outspoken opposition from Arizona, Nevada, and Oregon, Police Chief James E. Davis' flying squadrons of 136 city police officers succeeded in turning back hundreds of indigents and has caused at one border port, Blythe, a 50-percent drop in incoming hordes.

NO DUMPING GROUND

Mayor Shaw declared Los Angeles would not be the dumping ground of charity-seekers, fleeing from the more rigorous winters in practically every other State in the Union. He declared that on January 31, when the police commission showed him the gravity of the winter indigent problem with its trail of crime and added relief burdens, he asked City Attorney Chesebro for the legal opinion and received authority for Davis to set up the police "foreign legion."

"It is important to note," Mayor Shaw said, "that Los Angeles is facing a desperate situation if we permit every incoming freight train to bring us a new shipment of unemployed, penniless vagrants, to consume the relief so seriously needed by our needy people and to create a crime menace almost beyond conceivable control.

"Officials of cities and States en route will not permit these transients to leave the trains, preferring for their own safety that the problem should be dumped in Los Angeles.

"Our own recourse is to reinforce the sheriffs of the border counties with men loaned from the Los Angeles Police Department who can turn back the front ranks of these oncoming hordes promptly and in such numbers that the invasion can be halted at its sources as soon as the news reaches the east.

"We are simply trying to apply an ounce of sensible prevention to save a pound of costly cure later on. Critics of the plan have either not taken pains to examine facts or for mysterious reasons of their own are content to see Los Angeles filled with a homeless indigent army of thousands, recruited from every State in the Union and threatening every security and hope of our own working people.

"It is noteworthy that the critics have no constructive proposals of their own to offer with reference to this very real problem."

SLAP AT FACTION

The mayor's tart remarks were interpreted in city hall circles as a slap at the council faction which yesterday maneuvered a unanimous request from the council to City Attorney Chesebro for an opinion on specific points not covered by the opinion Chesebro gave the mayor.

A possible major development today was the suggestion of Governor Frank F. Merriam at Sacramento for a meeting of western States Governors to seek means of halting the westward tide of jobless.

"There are stations in Arizona," Governor Merriam said, "where chambers of commerce furnish gasoline to itinerants to help them along to California."

Speaking on the much-questioned legality of Los Angeles' far-flung expeditionary force, the Governor said, "I guess Los Angeles can do it; its city boundaries go almost that far."

Governor B. B. Moeur, of Arizona, declared, according to Phoenix dispatches, that Los Angeles was bluffing.

CHARGES "SCARE"

"What the Los Angeles police are trying to do is unconstitutional," he said. "They are simply trying to scare travelers away by threats of fingerprinting. I am investigating."

On the Oregon front, Governor Charles H. Martin said at Salem that the situation was alarming and that he was investigating through his State police force whether California's border could be closed to transients.

At Carson City, Nevada's Governor, Richard Kirman, said he was "not excited" by the transients' ban, but was watching a possible high tide of border-halted indigents, hurled back onto Nevada relief agencies. As the "war" went into its second day, wires hummed with communiques from the local front:

Yuma, Ariz.: Sgt. D. A. McCoole turned back six transients.

Blythe, Calif.: Sgt. B. B. Eubanks' detail turned back 200 indigents and reported the flow diminished to less than half during second 24 hours; 8 fingerprinted, 6 found with guns.

Needles, Calif.: Influx slowed down to a single alleged hobo. At nearby Cadiz, Sheriff Emmett Shay investigated set-up to report to San Bernardino County supervisors on advisability cooperating by deputizing Los Angeles "reinforcements."

Truckee, Calif.: Subzero cold had halted vagrant influx, but Sheriff Carl Tobiason of Nevada County deputized Los Angeles police who showed up in arctic boots and mackinaws.

Alturas, Calif.: Fourteen officers denied commissions by Sheriff John C. Sharp of Modoc County till he hears from attorney general whether it's legal.

Crescent City: Del Norte County's sheriff, Austin Huffman, refused commissions pending inquiry.

Plumas County: Sheriff L. A. Braden cooperating but not deputizing officers from Los Angeles.

Siskiyou County: Sheriff W. G. Chandler deputized 14 officers from Los Angeles; 7 stationed at Hornbrook and 7 at Dorris on great Pacific highway travel artery.

Sergeant D. Douglas, in charge of the "expeditionary force," reported to Davis that his men were halting tramps riding the "blind baggage" of railway trains and hitch-hiking into the State in autos. Of 16 men stopped at one port, Douglas reported 8 were found to have police records.

Sworn in as local deputies in the counties in which they are stationed, the officers of the squadron were taking hoboes off freight cars, tenders, and blind baggage compartments and holding them on two charges, vagrancy and evading railroad fares. Railroads are cooperating with the police, Chief Davis said. He explained the only reason the railroads had not succeeded earlier in halting the westward influx of tramps was lack of special officers. Some freights carry 50 or 60 hoboes, Davis said, and the men on the train crew are helpless to throw them off.

The chief, meantime, defended his plan on the ground that in sending 136 of his men to the State's outposts he has taken a "humane and legal course and the only one that will work."

"For years various plans have been advanced for discouraging these people from coming to California but nothing very efficient ever developed," the chief said. "Now with Government relief being gradually withdrawn, the situation is becoming alarming, if not desperate, to the residents of this community."

"If we wait until these thousands of indigents scatter over the 460 square miles of incorporated Los Angeles, the police department will have little control over them, but if we stop them at the arteries now being guarded, the situation is considerably simplified. If this is done, we confidently expect a 20-percent decrease in the crime total in the next 12 months. Records show that 65 to 85 percent of migratory indigents come to southern California. Fingerprinting of vagrants and street beggars recently showed that approximately 60 percent of these have criminal records. If we remember that to obtain Government work one must have been a resident in the State at least a year, it can readily be seen that the hordes of indigents are not coming to California for work. They are coming to get on relief rolls, to beg, and to steal."

The chief said he expected hoboland's grapevine would promptly pass the word to jungle camps.

"Our work will be all the more effective and easier when the bums learn that California authorities are actively hostile to them," Chief Davis said.

[Los Angeles Herald-Express, February 6, 1936]

Report All Beggars Is Plea

Along California's hundreds of miles of land frontier and on the home front in this city, Los Angeles police battled today to turn back hordes of jobless, penniless transients, who are said to have been pouring into this sunny clime from the wintry east at the rate of 6,000 to 7,000 a month.

Developments in the police campaign included:

1. Police Chief James E. Davis, after a conference with Sheriff E. W. Biscailuz, called on Los Angeles housewives to report immediately all beggars who come to the doors of the city's residential districts.
2. Governor Frank F. Merriam was requested today by Governor Richard Kirman, of Nevada, to "intervene" and prevent Los Angeles police expeditions on the border throwing indigents back into Nevada. Governor Merriam was expected to ask Kirman to join in asking the Federal Government to take a hand in halting the migrant work-fleeing hordes.
3. Ernest Besig, of San Francisco, director of the American Civil Liberties Union, a radical organization, demanded criminal and civil actions to halt Los Angeles police activities against the annual midwinter transient movement.
4. Sheriff Biscailuz broadcast to all sheriff's substations orders to enforce the State antivagrancy laws in unincorporated territory, with due care on the part of deputies not to hinder any lawful, personal rights.
5. On three State "fronts" sharp declines in the number of "gentlemen of the road" were recorded by vigilant police patrols.
6. Chief Davis was refused permission by A. C. Fleury, chief of the State bureau of plant quarantine, to use State quarantine stations on the highway entering California, as police outposts. Fleury said he could not grant the chief's request until assured the police expeditionary forces were legal.

[Los Angeles Herald-Express, February 12, 1936]

Seek to Balk Los Angeles Police Border Guard

Arizona, which has been gently shooing indigents westward into California for years, rose in wrath yesterday and threatened to call out the State's National Guard troops because Los Angeles, with its police blockade, has started the tide of jobless roamers back toward the East. The threat was caused by the sidetracking in Tucson of a boxcar in which some 50 eastern transients had been started homeward by the police along the border.

TUCSON CHIEF ACTS

Police Chief C. A. Woolard at Tucson acted when his men arrested 22 of the homeless men. He asked Gov. B. B. Moeur to call out troops "to stop California from dumping hoboes in Arizona."

Whether the Tempe physician, who rose to the office of Governor of the neighboring State, would take this militaristic step was a question. But calling out the guard is no new experience for Governor Moeur. The last time he did it was to stop the Government Reclamation Service from constructing the Parker Dam, a part of the Los Angeles aqueduct system. The troops responded nobly, rushing to the river bank and then creating an "Arizona navy" with a couple of scows to patrol the water front. Today the dam is rapidly proceeding toward completion with the Arizona warriors back in their homes and possibly waiting for the new call to arms.

DAVIS IN APPEAL

Police Chief James E. Davis considers California is not "dumping its bums" but merely moving transients back whence they came. Chief Davis pointed to the rapidly dwindling westward trickle of transients and called on all California to purge itself of hoboes.

Chief Davis appealed to police chiefs in other California cities to join him in the drive. The response from some places was immediate. Officials at Santa Ana, for instance, said they had established a rock pile not only for hoboes but for drunk drivers and other offenders.

[Los Angeles Herald-Express, February 19, 1936]

Group Demands Los Angeles Police Be Recalled From California Border

A formal demand that Police Chief James E. Davis' "foreign legion" be withdrawn from California's borders was filed with the police commission today by the American Civil Liberties Union, which asked that the police squads be returned to the city. Clinton J. Taft, California director of the union, said his organization was prepared to seek a court injunction if necessary to stop the police patrol. At the same time written protests against the "bum blockade" program were filed with the police board by the Hollenbeck Borough Voluntary Board and the Hollywood Open Forum. While the protests were being received, the police commission approved the allocation of an additional $1,000 to the border patrol of 166 policemen, effective today; another $1,000 for February 20, and a third $1,000 effective February 21.

APPENDIX D

Assembly Bill No. 2459

Introduced by Messrs. Redwine and Jones, May 16, 1935; referred to committee on unemployment

An act to prevent the entry into California of paupers, vagabonds, indigent persons, persons likely to become public charges, providing means for enforcing the same and prescribing penalties for the violation thereof, declaring the urgency thereof, and providing it shall take effect immediately

The people of the State of California do enact as follows:

Section 1. Large numbers of paupers, vagabonds, indigent persons and persons likely to become public charges have been, and are, coming into this State, burdening the relief rolls, creating further unemployment in the State, and subjecting our workers to competition with pauper labor. This influx of unemployed and unemployables at the present time seriously threatens the safety and welfare of the people of this State, and, if continued, will destroy the State. In order to protect this State and the people thereof from pauper labor; also to save this State and its people from impossible financial burdens in caring for vast numbers of paupers and indigent persons; also to preserve the public peace, health, and safety; also to preserve the standard of living of the people of this State and to maintain the general welfare and to protect and defend this State, it is imperatively necessary that hereafter no paupers, vagabonds, indigent persons or persons likely to become public charges, shall be allowed to enter or shall enter this State.

Sec. 2. All paupers, vagabonds, indigent persons are hereby prohibited from entering the State of California.

Sec. 3. It is hereby made the duty of the Governor of this State to enforce the provisions and purposes of this act by the means herein provided and by any other means that he may find necessary to enforce the same. He is hereby authorized and directed to use all means that may be necessary to enforce this act. He is also authorized to cooperate with the United States of America in all ways looking towards the effectuating of the purposes of this act.

Sec. 4. Every person whose right to enter the State of California is in question must affirmatively establish that he is not one of the persons excluded from entry under the terms of this act; the burden of proof shall be upon each such person.

Sec. 5. The Governor is hereby authorized and directed to use, in his discretion, any present agency, officers or officials of the State, and, if he deems it necessary or expedient, to create such new agency or agencies and employ such personnel as may be necessary to adequately enforce this act. He may also use the officers and officials of any county, city and county, city, or other municipal corporation in the enforcement of this act.

Sec. 5½. *The Governor is authorized and directed to in every practicable way carry into effect all of the provisions of this act and to that end may set up and maintain at State lines on major or other highways, under the jurisdiction of any department of the State designated by him, either temporary or permanent offices, stations, or bureaus, for the identification of persons and the inspection of motor vehicle or vehicles and to supervise and direct the use of the highway or highways by the person or persons, vehicle or vehicles, entering the State.*

Sec. 6. It shall be the duty of the Governor, either personally or through such official as he may designate for that purpose, to make and enforce all rules and regulations that may be necessary to carry out and enforce the purposes of this act. All such rules and regulations shall be filed in the office of the Secretary of State and shall be effective from the date of such filing. The Governor may likewise alter such rules and regulations from time to time. Any person who shall violate any of the provisions of this act or any of the rules and regulations so promulgated shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not exceeding five hundred dollars ($500) or imprisonment in the county jail not exceeding one (1) year, or both such fine and imprisonment; in addition any person so convicted who fails to establish that he was a bona fide resident of the State of California at the date of the approval of this act shall be summarily deported from the State of California.

Sec. 7. If any section, subsection, clause or phrase of this act is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have passed this act irrespective of the fact that any one or more sections, subsections, sentences or clauses or phrases thereof be declared unconstitutional.

If in any action, suit or proceeding it be adjudged that any provision of this act is unconstitutional as applied to the particular facts involved in such action, suit or proceeding, any judgment or decision rendered therein shall not affect the application of the provisions of this act in any other action, case, suit or proceeding.

Sec. 8. This act is passed to meet the emergency herein recited and shall remain in force only until February 1, 1937.

Sec. 9. Should any person enter the State of California in violation of the terms of this act, then upon the discovery of such person at any place in this State he shall be summarily deported from this State.

Sec. 10. This act is hereby declared to be an urgency measure within the meaning of section 1 of Article IV of the Constitution and necessary for the immediate preservation of the public peace, health, and safety and shall take effect immediately.

The facts constituting such necessity are as follows:

There exists in the State of California, in the United States and throughout the world a grave economic depression. Many persons have long wanted to live in California and now finding themselves without employment and without means of support in their fixed place of residence they have been and are moving to California in large numbers. There are hundreds of thousands of employable persons now within this State, most of whom are California citizens and who have no employment and who, together with their families, are now being maintained at public expense. In addition, today there are also hundreds of thousands of unemployed persons in this State who are not maintained by the public, but for whom no employment is available. There are also tens of thousands of unemployable persons in this State who are now being maintained at public expense.

Vast numbers of paupers, vagabonds, indigent persons and persons likely to become public charges have been and are coming into this State, burdening the relief rolls, creating further unemployment in the State, subjecting our workers to competition with pauper labor, and threatening the continued prosperity, health, safety and welfare of the people of this State. The entry into this State of unemployed persons who do not have sufficient means to support themselves results in large numbers of such persons being maintained at the expense of this State, or in the cases in which such persons obtain employment they displace workers already employed in California and the displaced workers and their families are forced upon public relief. If the influx of destitute unemployed continues it will be impossible to provide the sums necessary for relief or to provide employment for the increased numbers of jobless persons. The coming of large numbers of persons of the classes mentioned threatens the peace and safety of the State and it is imperative that no more paupers, vagabonds, indigent persons or persons likely to become public charges, shall enter or be permitted to enter this State.

(Amended in assembly March 31, 1939)

Assembly Bill No. 1356

Introduced by Mr. Houser, January 23, 1939; referred to Committee on Social Service and Welfare

An act to prevent the entry into the State of California of paupers, vagabonds, and fugitives from justice, providing for enforcement of this act and prescribing penalties for the violation thereof

The people of the State of California do enact as follows:

Section 1. Large numbers of paupers, vagabonds, and fugitives from justice have, and unless restrained will continue to, come into this State, and have created a problem of relief and law enforcement. This influx of such persons is detrimental to the best interests of this State and this statute is enacted in the exercise of the police power of this State as a matter of self-preservation, and to prevent the overburdening of facilities of the State for the relief of destitution and for law enforcement.

The Legislature hereby declares that the enactment and enforcement of this act is essential to the welfare of the people of this State.

SEC. 2. All paupers, vagabonds, and fugitives from justice are hereby prohibited from entering the State of California.

For the purposes of this act a pauper is a person who is likely to become a public charge within three years.

SEC. 3. The Governor of this State shall enforce the provisions of this act in the manner provided in this act or by any other means or methods available. In carrying out the provisions of this act the Governor is authorized to cooperate with any agency of the United States of America or of any other State of the United States.

SEC. 4. The Governor is hereby authorized to use, in his discretion, any department, board, commission, officer, or other agency of the State to enforce this act; and he may create any additional agency which, in his discretion, he finds necessary to carry out the provisions and to effectuate the purposes of this act.

SEC. 5. The Governor shall make and enforce all rules and regulations necessary to enforce this act. Such rules and regulations shall be filed with the Secretary of State and shall be effective from and after date of such filing.

SEC. 6. The Governor shall provide for the establishment of inspection points within this State and on each highway, road, or railroad entering this State; and he shall provide for inspection of all persons entering this State by boat, airplane, or any other method.

SEC. 7. Any person authorized by the Governor to inspect prospective entrants into this State is hereby authorized to examine *under oath* such prospective entrants for the purpose of determining whether such prospective entrants are paupers, vagabonds, or fugitives from justice. Any person may be restrained from entering this State if the person so authorized reasonably determines that he is a pauper, vagabonds, or fugitive from justice.

SEC. 8. Every person whose right to enter this State is questioned must affirmaively establish that he is not a person whose entry is prohibited under the provisions of this act.

Any person who has been refused the right to enter the State of California as herein provided shall have the right to bring a proceeding in the superior court of the county which he was prohibited from entering to test the validity of his exclusion. The defendant in said suit shall be the Attorney General of the State of California, whose duty it shall be to defend the same. Process shall be served upon said Attorney General, who shall make answer within ten days after the same is served upon him.

Said suit shall be heard and determined as soon as the convenience of the court will permit. The burden of proof shall be upon the plaintiff to establish affirmatively that he is not a person whose entry into this State is prohibited by the provisions of this act.

SEC. 9. Any person who enters the State of California in violation of this act is guilty of a misdemeanor.

SEC. 10. Should any person enter the State of California in violation of the terms of this act, then upon the discovery of such person at any place in this State he shall be summarily deported from this State.

SEC. 11. If any section, subsection, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have passed this act irrespective of the fact that any one or more sections, subsections, sentences or clauses or phrases thereof be declared unconstitutional.

If in any action, suit, or proceeding it be adjudged that any provision of this act is unconstitutional as applied to the particular facts involved in such action, suit, or proceeding, any judgment or decision rendered therein shall not affect the application of the provisions of this act in any other action, suit, or proceeding.

APPENDIX E

(Following are copies of articles and headlines from the files of the Florida Times-Union and the New York Times from 1934 to 1937 relating to border patrols at the Florida State line.)

[New York Times, December 6, 1934]

Florida to Bar the Indigent

Trenton, Dec. 5.—David Scholtz, [sic] Governor of Florida, today asked Governor A. Harry Moore to cooperate in preventing transients from making their way to Florida. Governor Scholtz [sic] served notice that no more transients would be admitted to Florida camps and those trying to enter the State without means of support would be turned back.

[Florida Times-Union, December 7, 1934]

Sholtz Fears Jobless May Prove Menace

CALLS FOR COOPERATION IN PREVENTING NEEDY INVADING STATE

Tallahassee, Dec. 6.—The possibility of a crime wave as a result of the unprecedented number of jobless transients being in the State presented a problem today for public officials.

Calling upon sheriffs and others to make every effort to get the jobless wanderers started on their way home, Gov. Dave Sholtz said "this is one of the greatest perils that has ever threatened our State." * * *

Governor Sholtz urged public officials to "take drastic action" so that "this threatened evil may be nipped in the bud. After hordes of these people are here it may be too late."

Earlier this week, Governor Sholtz telegraphed governors of all States east of the Mississippi River to "serve notice" upon their people that no more transients could be accommodated in this State, and that there was no available employment.

If transients without jobs or visible means of support come to the State, an effort will be made to turn them back at the State line. Should they succeed in entering the State they face "arrest, which would be unpleasant and unprofitable to all concerned," the Governor warned. * * *

[Florida Times-Union, December 11, 1934]

Patrol Established To Check Transient Travel Into Florida

Tallahassee, Dec. 10.—A motorized patrol took up its task of turning back transients at the Florida border today.

E. A. Schurman, highway department official under whose direction the patrol operates, said passenger automobiles will not be molested unless the equipment indicates the occupants "are travelling on a shoestring." * * *

[New York Times, December 23, 1934]

FLORIDA EXPECTS INFLUX OF JOBLESS

Governor Asks Other States to Help Turn Back Horde of Drifters—No Work For Them There—Border Patrol Suggested as the Federal Transient Camps are Filled

Lakeland, Fla., Dec. 20.— * * *

BORDER PATROL SUGGESTED

Governor Dave Sholtz has taken a hand in the matter by announcing to all and sundry of the jobless that stringent measures will be resorted to if there is the slightest necessity for such a step. He has also appealed to Governors of eleven other States to cooperate in keeping back the usual horde of drifters. He has gone so far as to suggest a patrol along the Georgia-Florida line to investigate the status of those whose appearance arouses suspicion, asserting that the situation "is one of the greatest perils that has ever threatened the State." * * *

Federal transient camps can take care of a maximum of 11,000, and that limit was reached some time ago. Prospective applicants who have not yet reached Florida should be warned quickly that they will be bitterly disappointed. This is contrary to a report broadcast through the other States several weeks ago. It inadvertently or erroneously urged the jobless to come to balmy Florida, and failed to point out that normally balmy weather does not keep one from needing food and clothes. * * *

[Florida Times-Union October 16, 1936]

INDIGENTS PROVEN RESOURCEFUL BY ATTEMPTS TO ENTER STATE

Enterprising hitchhikers, many with scant means of existence, develop new methods from day to day to outwit an alert motorized patrol Florida has established to stem the flow of indigent transients.

Patrolmen guarding the State's frontier against penniless invaders admit themselves puzzled in coping with some of the ruses employed against them.

In the first three days of the patrol's work for this season, they have turned back scores who sought admittance on arterial highways—most of them bumming rides on trucks entering the State.

By the end of this week, most of the patrol stations will be sufficiently manned to stop every vehicle entering the State to see that it contains no hitchhiker.

The day when the poor and jobless saunter across the border, unharmed and unhindered, are gone. Modern transportation methods are utilized to get into the State in the guise of routine business or pleasure travel.

Some transients are spending 25 to 50 cents for bus or train fare from some town in South Georgia to the nearest Florida point. From Kingsland, Ga., to Yulee, Fla., is but a few miles, for instance, and the fare is within easy reach of all but the poorest.

Others found it easy to pay truck drivers for a ride into Jacksonville, Lake City, Monticello, or one of the other gateway cities of Florida. But this practice is falling rapidly into disuse, because trucks are being stopped and their hitchhiker passengers are being sent walking back home.

Patrolmen, stopping rattle-trap cars whose occupants look like they might become charges of the State, sometimes are embarrassed.

"I stopped one car that looked like it was about to fall apart," a patrolman related. "I asked the driver, a Tennessee mountaineer, if he expected to find work in the State. He said he wasn't looking for a job and wouldn't have one."

"I questioned him some more, and then asked:

" 'Well, have you got any money?'

" 'Why didn't you ask that in the first place?' he came back. 'Sure I've got money.' And produced a fat roll of bills."

One boy was taken off a truck early this week and, after some questioning, admitted he had paid the driver $2 for a ride from Savannah to Jacksonville to avoid the motor patrol.

"The truck driver had left by then," a patrolman related, "or I would have arrested him, or at least have made him give the boy his money."

Most of the men return peacefully. None is driven off by force. If they won't go after being told to do so, they are arrested or (sic) vagrancy.

A few argue their constitutional rights are being overstepped, but the patrolmen only listen.

On the Savannah-Jacksonville highway approximately 30 were turned back Monday and Tuesday. From the Valdosta-Lake City patrol station came the report more than 50 had been stopped.

Few appeared Wednesday because of intermittent rains that kept them well back from the State line under shelter.

[New York Times, October 25, 1936]

FLORIDA AGAIN ACTS TO BAR "DRIFTERS"

STATE, WHILE "INVITING WORLD" SETS UP A PATROL TO KEEP OUT "UNDESIRABLES"—25,000 HALTED A SEASON

Florida finds itself in the embarrassing position of inviting the world to come here for the Winter and then stopping thousands of would-be visitors at the State line to ascertain whether they would be good visitors.

* * * for the third successive season Governor Dave Scholtz (sic) has established a border patrol to keep out those who might become a burden to others. Upon arriving at the State line, "drifters" who have no money and no prospects of a job are being turned back with the firm explanation that they are not welcome. * * *

The border-patrol method is the most effective Florida has been able to devise for the protection of the better class of Winter visitors. It is sociological, not mercenary, but it obviously is not a complete success. Too many ingenious undesirables manage to slip past the guards.

However, as fast as they cross the State line and proceed down the Peninsula they are running into a second obstacle—the local police. In most of the larger communities like Miami, St. Petersburg, Tampa, and Jacksonville, police have begun an intensive drive on vagrants. * * *

[New York Times, November 20, 1936]

Florida Bars Out 2,000 by "Poverty Quarantine"

Jacksonville, Fla., Nov. 19.—The Florida motor patrol, conducting a "border blockade" against penniless transients, estimated that by this week end it will have shunted from the State 2,000 hitch-hiking, rod-riding, and flivver-driving itinerants.

The second year of the poverty quarantine has brought a lessened flow of warmth-seeking transients, it was said, although comparative figures are lacking. Governor Dave Sholtz, who ordered the blockade, said that about 50,000 were turned back last season.

The Florida winter season is not yet under way, and a greater number of jobless wanderers are expected with the New Year.

The patrol was established to keep persons without funds from entering the State and turning to crime for support, Governor Sholtz said. They are ineligible for State or Federal relief.

[New York Times, December 20, 1936]

Florida is Divided on Border Patrol

OPPONENTS OF BAN ON INDIGENTS ATTACK MOVE—OTHERS POINT TO REDUCED CRIME

Lakeland, Fla., Dec. 18.—Florida is a house divided against itself over the question of whether Governor Dave Sholtz shall continue to maintain a patrol at the State line to turn back would-be Winter visitors who have little or no money and no job in sight.

Maintained during the past two Winter seasons, the patrol drew no audible complaints from Floridians, but objections have been expressed in every section of the State during the past few days.

It is undemocratic and unconstitutional to prevent United States citizens from passing at will from one State into another, say Floridians who view the patrol as the instrument of dictatorship.

It is a reasonable and effective method of avoiding a congestion of parasitic indigents and criminals, argue those who stand with Governor Scholtz [sic] in the matter of turning back visitors.

THOUSANDS ARE STOPPED

Several thousand persons described as "penniless drifters" have been stopped at the Georgia-Florida line this season, and other thousands will be halted if public opinion and a new Governor do not abolish the patrol.

* * * Criticism of the patrol plan by the press throughout the country has stimulated increasingly vigorous protest among Floridians who fear it will mar the State's reputation for hospitality. They assert that a welcome should be extended to rich and poor alike, especially since more jobs are available when the tourists arrive and citrus crops are being harvested. * * *

[New York Times, September 11, 1937]

FLORIDA LIFTS BAN ON IDLE

GOVERNOR DOUBTS LEGALITY OF ROAD CLOSING, BUT WARNS RACKETEERS

TALLAHASSEE, FLA., Sept. 10.—Florida's boundaries, closed for two winters to fundless job-seekers, will be open this year to all who come South. But "vagrants, crooks, and racketeers in fine limousines or Pullman cars" had best beware of local police and Sheriff's forces.

Governor Fred P. Cone gave the warning today in announcing he would not reestablish the road patrol that formerly guarded five arterial highways into Florida, "unless it becomes necessary."

"I don't think it's constitutional to tell a man he can't go from one State to another," the Governor said. "Just because a man's poor and wants to find a job in Florida is no reason for keeping him out of the State. Why, some of the worst people that come to Florida in the wintertime are racketeers in fine limousines and Pullman cars. There are plenty of crooks in fine automobiles."

[New York Times, October 3, 1937]

GOVERNOR CONE HAS POKED OLD EMBERS INTO FLAMES BY ANNOUNCING * * * HE WILL NOT ESTABLISH A BORDER PATROL TO KEEP OUT JOBLESS PERSONS * * *

THE BORDER PATROL

Most Miamians who are calling for a border patrol at the northern boundary of the State are doing so on the ground that Miami will have to bear most of the burden if indigent transients are allowed to enter. They argue that most Winter transients, seeking a warm climate and pick-up jobs, eventually land in Miami.

Waving critics aside, the Governor insists that it would be exceedingly undemocratic to close the State to unfortunates.

Miami is taking steps locally to combat any influx of dependent camp followers.

* * *

APPENDIX F

(Executive Order of Governor Edwin C. Johnson, Colorado, dated April 20, 1936)

STATE OF COLORADO,
EXECUTIVE CHAMBERS,
DENVER.

(Copy of)

EXECUTIVE ORDER

PROCLAMATION

Whereas certain individuals within the State of Colorado are acting in conjunction with large numbers of persons outside of said State who are aliens and indigent persons to effect an invasion of said State; and

Whereas it has been made to appear to me that a large number of said persons who are without means of support are entering, and, unless prevented, will continue to enter the State by crossing the southern boundary thereof, and

Whereas the entering of aliens and indigent persons into this State in such large numbers constitutes an invasion that will create, encourage and cause a condition of lawlessness and inevitably tend to discontent and unrest among the citizens of this State generally, and particularly along the southern border thereof, and will lead to social disorder and disturbances among our people, more particularly because the existing economic depression has rendered it impossible for many of our own citizens to find employment or to procure means of subsistence other than through public and private charity, and

Whereas said invasion into this State, if continued, may result in serious commotions and disturbances of the public peace and produce conditions of public disorder which the local and State authorities will be unable to cope with, and

Whereas, by reason of the conditions hereinbefore set forth an emergency exists;

Now, therefore, I, Ed. C. Johnson, Governor and Commander in Chief of the Military Forces of the State of Colorado, by virtue of the power and authority in me vested, do hereby declare and proclaim that the area consisting of a strip of territory one mile in width along the southern boundary of the State, from the east boundary thereof to the west boundary thereof is threatened with an invasion and the same is hereby placed under martial law.

The Adjutant General, Neil W. Kimball, is hereby directed to order out such troops as in his judgment may be necessary and proceed therewith to the locality herein described, and, with no more interference with the ordinary operation and processes of civil government in said territory than shall be necessary in the use of said military forces, to prevent and repel the further invasion of this State by any such aliens, indigent persons, or invaders, and to repel and return all such persons found in said territory to the State from which they shall have entered said described area.

Furthermore, I call upon all patriotic and law-abiding citizens of said State to desist and refrain from, in any manner aiding, abetting or encouraging any such aliens, indigent persons, or invaders in entering the State, or in any way interfering with the due execution and processes of this proclamation.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Colorado.

Done at the State Capitol, in Denver, this Eighteenth day of April, in the Year of Our Lord, One Thousand Nine Hundred and Thirty-six.

——— ———.

Governor and Commander in Chief.

Attest:

——— ———,

Secretary of State.

APPENDIX G

(Following are copies of articles and headlines from the files of the *Denver Rocky Mountain News* relating to the border patrols at the Colorado State line during 1936.)

[Denver News, April 19, 1936]

TROOPS CLOSE STATE TO ALIENS, JOBLESS

GOVERNOR DECLARES MARTIAL LAW AND MOBILIZES NATIONAL GUARD ON SOUTHERN BORDER TO CHECK ALIENS—DENVER NATIONAL GUARD WILL LEAVE SUNDAY TO PATROL HIGHWAYS AND INSPECT EVERY TRAIN

Drive is drastic

PLAN IS TO ELIMINATE ALL WHO COME HERE JUST TO GET ON RELIEF ROLLS

By BARRON B. BESHOAR

☛ Khaki-clad troops of the Colorado National Guard will move into Southern Colorado early Sunday to repulse a threatened invasion of alien beet laborers and indigent workers from Mexico, New Mexico, and Texas.

In a sensational move, Governor Johnson Saturday declared a state of martial law to exist over a strip of territory one mile wide, extending 360 miles along the Colorado-New Mexico border from Kansas to Utah.

Following issuance of the executive order—which becomes effective immediately—Adjt. Gen. Niel W. Kimball laid plans for mobilization of troops from Denver guard units and F Battery at Monte Vista.

TROOPS LEAVE SUNDAY

The Denver troops will leave early Sunday in National Guard trucks for Trinidad. By a peculiar coincidence, they will pass Ludlow Field, north of Trinidad, where miners are holding services in commemoration of the 22d anniversary of the Ludlow Massacre, in which guard troops participated.

Tents will be pitched at the border on highways leading from New Mexico into Trinidad, Branson, Antonito, Durango, and Cortez, and arrangements will be made to inspect trains coming in over three railroad lines from the south, the adjutant general said.

According to the terms of the governor's proclamation, military rule will prevail over the affected strip, but the guard command has orders to interfere as little as possible with the civil authorities.

Persons or corporations anywhere in Colorado conspiring to violate the proclamation by importing aliens or indigent persons will be arrested and prosecuted by the military authorities, the governor said.

MUST BE STOPPED

"Importation of laborers must stop immediately," the governor said as he signed the proclamation. "The Denver & Rio Grande Western Railroad and others are shipping in track laborers at the present time.

"We have received word that at least 75 men were brought into Pueblo by way of the San Luis Valley.

"Ike Williams, a labor contractor, has gone to New Mexico and Texas with the intention of bringing a whole trainload of beet laborers north to Boulder Countty [sic].

"I have also learned that sheep shearers are coming into the state in large numbers."

In addition to ordering mobilization of as many troops as may be needed, the governor called on the State Highway Courtesy Patrol and peace officers of Southern Colorado counties to aid in turning back the threatened invasion.

He also called "upon all patriotic and law-abiding citizens of the state to desist and refrain from, in any manner, in aiding, abetting, or encouraging any such aliens, indigent persons, or invaders in entering the state, or in any way interfering with the due process of this proclamation."

The recently organized port-of-entry system will be depended upon for the time being to repel undesirables from the Eastern, Western, and Northern borders, the governor said.

"If reports indicate such action is necessary I will declare martial law along these borders, too," he asserted.

His action in placing a cordon of guards along the southern border was similar to steps recently taken by Los [sic] Los Angeles and the state of Florida.

All trains entering the statet [sic] will be inspected, and all trucks and passenger automobiles will be stopped at the border. In the event the travelers are unable to show financial responsibility they will be turned back.

Offices and sleeping quarters of the troops—who will guard the border at all hours—will be maintained in tents pitched on the Colorado side of the state boundary line.

Governor Johnson expects the drastic measure will stop importation of labor into Colorado and halt the stream of indigents who enter the state, offer to work for less than Colorado labor and eventually swell the relief rolls.

Adj. Gen. Kimball will establish headquarters in Trinidad Sunday and remain in the field until such time as the governor decides the emergency has passed and lifts the martial law order.

PATROL OFFERS AID

Among the officers who will assist him are Lieut. Col. E. A. Austin, Maj. William O. Perry, judge advocate, who will be in charge of legal matters, and Capt. Joseph E. Ryan.

Joseph Marsh, supervisor of the State Highway Courtesy Patrol, placed nine patrolmen at Kimball's disposal Saturday and offered to draw additional men from the northern part of the state if necessary.

Approximately 50 Guardsmen will go on duty Sunday and more will be mobilized if necessary, Adj. Gen. Kimball said.

Action of the military authorities along the border will be final and there will be no recourse to the courts under the terms of a martial law proclamation, he said.

The governor threatened March 13 to call out troops to stop importation of beet labor but dropped the matter after being assured by officials of the Great Western Sugar Co. and Paul D. Shriver, state director of the W.P.A., that such action would not be necessary.

FIRST MARTIAL LAW SINCE '21

At the time, Director Shriver informed the governor he was cutting his rolls to allow qualified persons to engage in beet work. Hundreds have been made available for farm labor, but importation of workers continued to threaten the state, the governor said.

When informed of the governor's action, William L. Petrikin, chairman of the board of the Great Western Sugar Co., said:

"We'll employe [sic] all of the beet labor available in Colorado and after that—well, if he doesn't want beets grown in Colorado that's that."

The governor's order Saturday marks the first time martial law has been declared over Colorado territory since 1921 when Oliver H. Shoup, who was then governor, sent troops to Walsenburg, declaring a state of insurrection and rebellion existed.

Guardsmen were sent to Pueblo after the 1921 flood, to the state penitentiary during the attempted break in 1929, and were sent by Governor Adams to the Columbine mine in Northern Colorado in 1927 tho a state martial law was not declared at the time.

The most lengthy period of martial law was during the coal strike of 1914 in Southern Colorado. The State is still paying interest on more than one-half million dollars worth of so-called insurrection bonds as a result of the industrial disturbance. * * *

[Denver News, April 20, 1936]

Troops Move into Action at Dawn to Prevent Invasion by Indigent

ARMED FORCE ACTING UNDER MARTIAL LAW TO STOP ALL—ENTIRE SOUTHERN BORDER OF COLORADO WILL BE PATROLLED BY SOLDIERS TO HALT ALIENS, NEEDY

Money to be test

Autos, Busses, and Trains will be Searched by National Guardsmen

Armed Colorado National Guardsmen moved on the state's southern border Sunday and at dawn Monday they will spread out fanwise to cover the 360 square miles placed under martial law by Governor Johnson and to enforce his order to turn back all indigent laborers and aliens seeking entry into Colorado.

With the detachment from Denver went Adj. Gen. Neil West Kimball, chief officer of the Guard, who will set up his headquarters at Trinidad.

Thirty-six men and their officers left the Guard armory at E. Third ave. and Logan st. at noon for the "front"—the strip of land one mile wide and extending from the Kansas to the Utah border.

MONEY IS THE TEST

The 36 men to leave Denver were members of the tank and artillery units of the guard, comprised in the 157th Infantry and the 168th Field Artillery.

Reinforcements Monday from other guard units and co-operation from county officers and the State Highway Courtesy Patrol will furnish enough men to place guards at all principal ports of entry from New Mexico and the Oklahoma Panhandle.

Every automobile, bus, and train—with the exception of the first-class passenger limiteds—will be stopped and searched.

Money and financial responsibility is the test laid down by Governor Johnson for entry into the state.

"If they do not have money, or means of support, do not let them pass," is his order.

"Colorado cannot care for indigents from other states, and these people become charges of the state after the brief spring labor season ends."

RAILROADS COOPERATE

General Kimball, before leaving Denver, conferred with railroad representatives and announced they assured him of their cooperation in stopping and searching trains.

"We will not stop the transcontinental trains," he said.

"We are particularly interested in the local trains on which some companies might attempt wholesale importations of cheap labor.

"We are going to search these trains and also all freight trains. The railroads told us they were particularly anxious to halt the influx of hoboes on these freights. They said they had attempted to do this themselves but had failed."

Four high-speed army trucks and a caravan of automobiles took the Guardsmen from Denver Sunday.

PLANES MAY BE USED

Maj. Virgil D. Stone, commander of the 120th Observation Squadron of the Guard, is expected to fly to Trinidad Monday.

He was awaiting orders from General Kimball Sunday night. It is believed several Guard planes may be sent to the border the early part of this week and that at least one will be kept in service for observation and communication purposes thruout the existence of the martial-law edict.

At Walsenburg, Capt. Joseph E. Ryan and Lieut. Col. E. A. Austin left the main detachment from Denver Sunday afternoon.

They continued alone, Captain Ryan to Antonito and Colonel Austin to Durango.

Thus, the 360-mile strip of border will be divided into three sectors, with General Kimball in charge of the eastern, Captain Ryan the central, and Colonel Austin the western.

Battery D of the 168th Field Artillery at Monte Vista, commanded by Captain Harry E. Kistler, will furnish the men for the commands of Captain Ryan and Colonel Austin.

ROADS TO BE PATROLLED

Principal ports of entry to be patrolled in the eastern sector are:

The road leading from Oklahoma to Springfield, Colo.

The road to Branson, Colo., from Clayton, N. M.

The coast-to-coast highway entering Trinidad from Raton, N. M.

Captain Ryan's command will patrol the main road from Chama, N. M., into Antonito and numerous smaller highways.

The western sector will have two principal ports to watch, the road from Gallup, N. M., to Cortez, Colo., and the road from Farmington, N. M., to Durango.

CHARGES ARE DENIED

Several large users of labor Sunday denied the governor's charges, contained in the proclamation he issued late Saturday, that they were "conspiring" to import cheap labor.

"We are cooperating with all the governor's recognized labor organizations in obtaining labor we need for sugar-beet fields," said C. V. Maddux, labor representative for the Great Western Sugar Co.

"Of course, until the growing season is pretty well under way, we cannot determine just how many laborers we may need. But we seem to have plenty."

Similar statements came from several railroads. Executives contended they were obtaining their labor from federal and state employment or relief organizations.

SITUATION UNCHANGED

Paul D. Shriver, State WPA administrator, who engaged with the governor in a dispute a year ago when the governor then threatened to call out the guard to halt aliens or indigent workers from Colorado, said as far as he knows the situation still is unchanged.

"Federal authorities have informed us we are unable to purge relief rolls of aliens," Shriver said. "The rules provide there shall be no discrimination. I have been told that an unemployed alien gets just as hungry as a naturalized or other citizen of this country.

"Immigration authorities also have informed the governor that an alien can be deported only if he is a criminal.

"We recently dropped between 6,500 and 7,000 beet sugar workers from relief rolls because of seasonal work in beet fields available for them. I understand there are about 15,000 beet workers employed in the state each year. There seems to be sufficient laborers of this class.

"We cannot get all the people on relief rolls jobs in beet fields. It takes a certain amount of skill to do that work. The ones we dropped have had experience in beet fields."

[Denver News, April 21, 1936]

COLORADO TROOPS ON BORDER TURN BACK 70 PERSONS WHO HAVE NEITHER JOBS NOR CASH

TEARFUL SCENES ENACTED AS NATIONAL GUARDSMEN LAUNCH DRASTIC DRIVE TO KEEP OUT INDIGENTS—EVERYONE STOPPED—MORE MILITIAMEN WILL BE CALLED OUT TO TIGHTEN UP PATROLLED REGION

TRINIDAD, COLO., April 20.—Seventy men, women, and children who knocked at Colorado's Southern gateways Monday found the way blocked by armed national guardsmen. * * *

No matter how they arrive—in sleek, shiny limousines or battered flivvers, by passenger train or by frieght train, by spacious bus or ancient truck—everybody was forced to pass the inspection of the guards. * * *

Joe Rhonish, 22, and his brother, Lawrence, 21, drove up from Maxwell, N. M., in an old coupe. They told the Guardsmen they were on the way to Colorado in a search for a place to farm.

"Have you any money?" asked Lieutenant Holson.

"A little," they replied, but, when they could show the patrol only $3.50, they too, were turned back to New Mexico. * * *

The first Denver car to be halted at Ranton Camp contained William H. Saunders, new football coach at the University of Denver, and Mrs. Saunders. They explained good-naturedly they were on the way from their ranch in New Mexico to Denver and were waved on with a smile.

[Denver News, April 22, 1936]

TROOPS PLUG LOOPHOLES IN ALIEN PATROL

MORE SENTRIES ASSIGNED TO POSTS ON BORDER IN BLOCKADE AGAINST ALL INDIGENT AND JOBLESS—MANY TURNED BACK—RUMORED ATTEMPT TO BE MADE TO SMUGGLE IN LABORERS DURING NIGHT

TRINIDAD, COLO., April 21.—Colorado's embargo against penniless humanity Tuesday faced the threat of blockade runners, operating on a wholesale scale and seeking to pierce the border patrol which—theoretically, at least—extends 360 miles along the State's Southern boundary. * * *

A number of Spanish-speaking Guardsmen, dressed in faded overalls and carrying the few necessities of the hitchhiker, have been sent secretly over the border into New Mexico and Oklahoma to mingle with itinerant laborers and learn as much as possible about reported plans for breaking thru the blockade. * * *

Persons found guilty may be tried in a court martial, since the district is under martial law, it was pointed out.

[Denver News, April 22, 1936]

JOHNSON ASSURES GOVERNOR TINGLEY

FARMINGTON, N. M., April 21.—Gov. Clyde Tingley said here Tuesday night he had received telephonic assurances from Governor Johnson of Colorado that New Mexico workers would be admitted to Colorado as soon as a "reserve" of labor in that State had been exhausted.

"Governor Johnson informed me that as soon as there is a lack of laborers in Colorado he will allow New Mexicans to enter the State, but he will not permit entry of aliens from Old Mexico," said Governor Tingley.

"I told Governor Johnson that I did not want residents of this State barred from entry into Colorado, and also that I did not want to be forced to keep Coloradans out of New Mexico. I pointed out that a substantial number of Coloradans are employed in New Mexico."

[Denver News, April 23, 1936]

TINGLEY WARNS TROOPS NOT TO CROSS BORDER

COLORADO NATIONAL GUARD NOT WELCOME IN NEW MEXICO, HE DECLARES

Warning to the Colorado National Guard to stay out of New Mexico in carrying out its border blockade against indigent laborers came from Gov. Clyde Tingley of that State Wednesday. * * *

[Denver News, April 24, 1936]

NEW MEXICO MAY BAR COLORADO GOODS

GOV. TINGLEY THREATENS TO HIT BACK AT STATE MILITIA—RESENTS "HIGH-HANDED ATTITUDE" IN REFUSING TO ALLOW CITIZENS TO CROSS SOUTHERN LINE—TALKS REPRISALS—JOHNSON IS EXPECTED TO CONFER WITH HIM BY TELEPHONE ON CRISIS

Complications with New Mexico over Colorado's militarized southern border neared a serious stage Thursday and it was expected Governor Johnson would confer Friday by telephone with Gov. Clyde Tingley in Santa Fe.

Reconnaissances in New Mexico by members of the intelligence staff of the Colorado National Guard and the dumping of the unwanted labor back across the border drew the fire of Governor Tingley in two official statements during the day.

In one, he threatened to bar shipments of Colorado goods into New Mexico unless Colorado's "high-handed attitude" is modified. * * *

"You would think New Mexico had been cut off from the United States and was a foreign country," he said.

"These people are not aliens any more than the people of Colorado are aliens. They are descendants of people who settled this country when Colorado was still a part of Mexico." * * *

[Denver News, April 25, 1936]

NEW MEXICO'S SENATORS HIT COLORADO BAN

HATCH SAYS PROCEDURE VIOLATES CONSTITUTION; CHAVEZ HINTS REPRISAL

WASHINGTON, April 24.—New Mexico's two Senators—Dennis Chavez and Carl Hatch—believe Governor Johnson is exceeding his authority in establishing a military embargo on the Colorado-New Mexico border.

"If Governor Johnson is actually discriminating against citizens of New Mexico," said Senator Hatch, "I think he is transcending his authority as governor and I respectfully refer him to Section 2, Article 4 of the United States Constitution."

The section referred to by Senator Hatch reads:

"* * * citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

"It is too bad such a thing had to happen," Junior Senator Chavez exclaimed. "I think Governor Johnson will see the error of his ways. * * *

PLACE COLORADO ENGINEERS

"New Mexico has been most generous to people from Colorado. Many of her graduates from Mines and Aggies are given jobs soon after leaving school as engineers on our highways and in other places.

"These are comparatively high-salaried positions as contrasted with the wages paid laborers seeking employment in Colorado beet fields and they are apt to suffer in the future if Governor Johnson persists in his policy."

[Denver News, April 26, 1936]

BORDER BAN ON INDIGENT NEARING END

JOHNSON, WORRIED OVER INCREASING PROTESTS, IS EXPECTED TO LIFT ORDER WITHIN NEXT 10 DAYS—POLICY IS CRITICIZED—BUSINESSMEN CONCERNED OVER RETALIATION BY NEW MEXICO PATRONS

Collapse of the border blockade and withdrawal of the martial law edict along the 360-mile southern boundary of Colorado was forecast in political and Statehouse circles Saturday as protests against Governor Johnson's drastic action to keep alien and indigent labor out of the State increased in number and heat. * * *

Repercussion to the militarization of the State's Southern boundary—a step which has been branded as contrary to the Constitution of the United States—is causing Governor Johnson grave concern, it was learned.

NUMEROUS PROTESTS

Added to the opposition within the State is that from New Mexico, where movements have been launched to boycott Colorado goods and where Gov. Clyde Tingley has threatened to bar trucks bearing shipments from Colorado.

APPENDIX H

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

JOHN LANGAN, PLAINTIFF, *v.* JAMES E. DAVIS, AS CHIEF OF POLICE OF THE CITY OF LOS ANGELES, DEFENDANT. NO. 844-S IN EQUITY

OPINION

STEPHENS, District Judge.

John Langan, the plaintiff or complainant herein, is a citizen of California and of the United States. According to his bill of complaint, on or about 5 A. M. of February 10th, 1936, the complainant was entering the State of California (by automobile) on the public highway from Arizona and was accosted by policemen of the City of Los Angeles, California, acting under the direction of the Chief of Police of such city, and was stopped, taken into custody, molested, questioned, and threatened ejection from the state unless he did then and there prove to the policemen's satisfaction that he was not a resident of another state and was not an undesirable citizen. Langan was, at the time, in pursuit of his lawful business which frequently calls him across the state lines of California; had committed no crime nor was he accused thereof, and the officers possessed no warrant for his arrest. Langan claims that he was thereby deprived of his constitutional rights as guaranteed by the Fifth and the Fourteenth Amendments to the Constitution of the United States. He also claims that he has suffered a money loss of $5,000.00 He asserts that his future legal right to go freely across the California state lines in the lawful calling in which he is engaged is endangered, and requests an injunction against the Chief of Police of the City of Los Angeles from continuing to exercise the claimed right to repeat the procedure above set out in brief, or to go further as is indicated possible under a written order which is annexed to the Bill and made a part thereof. The complainant prays that the said Chief of Police be enjoined from "stopping, molesting, questioning, fingerprinting, arresting, or otherwise interfering with plaintiff's (complainant's) entering California or with plaintiff's traveling in California or with plaintiff's traveling between any of the states bordering upon California."

The order attached to and made a part of the bill is a five page, single spaced, typewritten document headed "Office of the Chief of Police, Los Angeles, Police Department, February 1st, 1936, SPECIAL INSTRUCTIONS. To the Officers of the Headquarters Division. It is signed James E. Davis, Chief of Police, Official—Homer B. Cross, Deputy Chief of Police.

(Digest of the Order)

1. A "Headquarters Division" is created under command of a designated Captain with "post of command" in Los Angeles City Hall.

2. "The immediate mission of the Division shall be that of covering the points of ingress, both highway and railroad, into the State of California."

3. "The field of operation shall include the counties through which the highways or railroads enter the State of California." Then follows the names of counties in which the field of operation lies, with their county seats and names of sheriffs. "The field of operation for administrative and tactical purposes is divided into three areas": Northern, Central, and Southern. Each area shall be commanded by a Lieutenant of Police and designated "Area Commander" who shall be immediately subordinate and responsible to the captain commanding the Headquarters. Command posts are designated for each area.

4. Operations and personnel of each county in field of operations shall be commanded by a Sergeant of Police under and responsible to the appropriate Area Commander. For practical operation squads of seven policemen are to serve under Acting Sergeants. "Points of advantage" are to be selected for covering railroad and highway ingress. "Much latitude is given the squad and Area Commander in the execution of this plan. Individual initiative is encouraged to determine the proper modus operandi."

5. Advantage is to be taken of State Agricultural Quarantine Stations in covering highways, as they are strategically located.

6. Railroad cooperation as to every possible assistance to special agents in execution of plan and as to stopping freight trains, "return of subjects that have been removed from incoming trains to points without the State of California" has been assured.

7. "The sheriffs of each of the several counties hereinbefore listed have assured us of their cooperation and have agreed to deputize, without remuneration, the officers from this Department assigned to their respective counties. This is for the purpose of giving unquestioned authority to the officers of this Department while acting as peace officers in the respective counties. All officers are directed to cooperate with the sheriffs and conform to the general policies that he may promulgate."

8. "The squad leaders and the superior officers of the division are instructed to afford water and other essential subsistence as well as to insure sanitary conditions for those subjects removed from incoming trains during the interim between their removal from the trains until they are placed on a train leaving the State of California."

9. "The cooperation of the local sheriffs and railroad authorities shall be solicited in these matters."

10. "It may be necessary to erect barricades and afford a degree of shelter to those subjects awaiting their exit from California. The sheriffs and the railroads may prove of material assistance in this matter."

11. The officers assigned to the work are volunteering. They will be paid by the city of Los Angeles. For additional expense to officers it is planned to pay maintenance, medical costs.

12. No other costs allowed, these to be kept at minimum.

13. Covers details as to injuries and reports thereon, etc.

14. If subsistence and housing costs are not provided by city, ten days' vacation per month to be granted to each officer.

15. The time of operations is uncertain. Officers may take their own automobiles and, when transporting other officers, gas and oil will be furnished.

16. Police Department automobiles will be assigned to the division commanders, Areal Lieutenants, Sergeants of the County, and certain squad leaders. Credit cards will be issued for auto supplies.

17. State Teletype Stations are to be used.

18. Officers to provide warm clothing; when on duty to wear police uniforms, overcoats, and head-gear, discretionary to conform to weather. Los Angeles Police Department badge to be worn on left breast, apparent and visible.

19. Skid chains are to be used in cold sections.

20. "Officers shall extend every effort to secure the cooperation of the peace officers of the state, county, and municipalities in which they may be working. The same is true of public officers and citizens."

21. "Each subject taken into technical custody will be fingerprinted. The impression shall be taken upon three cards and the Los Angeles Police Department Identification Sheet, making a total of four sets of impressions for each subject. Any additional information will then be entered upon the cards and descriptive sheet and then distributed as follows:

"1. Shall be air-mailed to the Federal Bureau of Investigation, Dept. of Justice, Washington, D. C.

"1. To be forwarded through ordinary mail to the Record Division, Los Angeles Police Department.

"1. To be retained at the Sheriff's office of the County in which the squad is operating."

Then follows detail of handling fingerprinting and communication with authorities wanting persons found through identification.

22. Juvenile subjects handled as sheriff of county prescribes.

23. Advantage should be taken of the State Relief Administration in handling juveniles, and parents with families entering State particularly by highway.

24. "The State statutes under which we may be operating upon this plan of action are as follows:

"1. Those taken from the trains are taken into custody for violation of Sec. 587c of the Calif. Penal Code, to wit: Evading Railway fare, a misdemeanor.

"2. Those subjects hitch-hiking or wandering along the highways without reasonable amount of funds are in violation of Sec. 647, Penal Code of the State of California. Subsection 2 of this section defines them as vagrants wandering from place to place without visible means of support."

25. "Officers working on this detail shall shake down every subject, removing from his person any and all dangerous weapons."

26. This paragraph sets out a detailed system of reports by commanding officers as to activities. The original of consolidated report to go to Chief's office. These reports do not go to any outside Los Angeles Police Department.

27. A copy as to each arrest report, where subject placed in confinement, shall be forwarded to the Division Commander, City Hall, Los Angeles.

We shall hereinafter occasionally refer to this document as the "plan."

An order has issued in this cause requiring the Chief of Police to show cause why he should not be temporarily enjoined from molesting complainant in any of the ways suggested by this plan.

The defendant Chief of Police has moved to dismiss the action on the ground that this court is without jurisdiction in the premises; and has made several other motions, supported by affidavits, which need not be noticed at this juncture.

The consideration of the motions and the order to show cause came on for argument coincidentally, after written briefs had been furnished the court, and proceeded by consent primarily upon the jurisdictional question. The United States District Court is one of limited jurisdiction and can entertain cases only after statutory authorization under the limitations of the Constitution.

It will be well in the beginning to dispose of a diverting phase of the case. There is mention of deputization of policemen as deputy sheriffs, but the complainant charges the Chief of Police alone in his official capacity with the alleged wrong and the jurisdictional question must be determined upon that basis. If the case is meant to be based upon acts of deputy sheriffs there are no allegations in the complaint tending to make the Chief of Police of Los Angeles city the responsible party.

Counsel for both parties approach the jurisdictional question from the standpoint of legality of the acts alleged, whether by the Chief or by deputy sheriffs. But I deem it more fundamental to first consider whether the Chief or his men, as policemen, had any competent authority to act at all in furtherance of such plan. If they could not legally so act then any comment on the intrinsic legality of the plan under execution by competent authority would be improper for, as we shall see, this court would be without jurisdiction to entertain any phase of the case.

Neither counsel for the defendant Chief of Police nor for complainant claim that the Chief of Police or police officers of the city of Los Angeles, as such, have anything but incidental and here unimportant authority outside of the city limits, and counsel for the Chief, undoubtedly right in such contention, cite the City Charter in their argument to the effect that such policemen could not perform the duties assigned to them in such plan under legal claim of authority as Los Angeles policemen. It will be apparent from authorities to be cited that their acts outside of city territory, being unsupported by any legislative or judicial fiat, are not under the color of such authority. No other element of fact need be considered to determine that the action cannot be maintained in this court. The basis for this determination follows.

Complainant depends upon the guarantees of the Fifth and Fourteenth Amendments of the United States Constitution, together with certain statutory requirements, to entitle him to maintain his action in this Federal Court, contending that he has been deprived of his liberty without due process of law and has not been accorded equal protection of the laws. The Fifth Amendment does not afford a Federal court forum for every curtailment of liberty, it merely prohibits such curtailment under the authority of the United States government, except through "due process of law." Each State court maintains its jurisdiction to try the differences between its citizens and both parties here are citizens of California. The State court is open to complainant in this cause unless the state itself (in contemplation of law) is the accused. As to the latter circumstance the Fourteenth Amendment applies, that is, under the Fourteenth Amendment no State shall deprive any person of liberty without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

Since the activity complained of is not at all that of the United States and therefore does not touch the Fifth Amendment, it follows that the only circumstances that can retain the complainant's suit in Federal court is a showing on the face of the complaint that the defendant is in fact acting under authority, or color of authority, of the State of California (*U. S.* v. *Wheeler*, 254 U. S. 281).

It will be seen by authority to be cited that if the Chief of Police were authorized by any legislative or judicial fiat to proceed to action under this plan, in contemplation of law, his action thereunder would be the action of the state. We have seen, however, that the police action outside of the city boundaries is ultra vires and is unsupported by any legislative or judicial fiat and it therefore follows that neither the state nor its agent is the defendant actually or colorably. The Fourteenth Amendment therefore does not afford complainant a forum for his suit in Federal Court.

There is but one case (*Home Tel. & Tel. Co.* v. *City of Los Angeles*, 227 U. S. 278) cited that casts the slightest doubt upon the theory that acts plainly outside of constituted authority are no more than the acts of private individuals, and the doubt producing expressions have been declared, in several well considered cases, as unnecessary to the decision and District Courts have not followed such dicta. It should be noted that *Ex parte Field*, 5 Blatchford, U. S. 63, cited by complainant, concerns the act of an officer of the United States and not of the State and therefore is not pertinent to the point under discussion.

The late District Judge Martin J. Wade, of Iowa, whose qualities as a great judge were only surpassed by the fineness of his character, after analyzing the Home Tel. & Tel. Co. case (supra) and declaring the novel expressions therein to be dicta, said: "Summing up all decisions it is apparent that it never was the intention that the Fourteenth Amendment should bring before this court (allegedly) unlawful acts by an individual, or by a state officer, except when such acts have their foundation in some express authority of the state, either by legislation, or possibly by judicial misconstruction." (*Berry* vs. *Ringgold County*, 43 Fed. (2nd) 169.) See *Brawner* vs. *Irwin*, 169 Fed. 964, a case relied upon by counsel for defendant, regarding which he comments, "We believe this case is most in point." *Brown* vs. *Mississippi*, U. S. Supreme Court advance sheets, February 17, 1936, and authorities cited therein.

A case in point is *Barney* vs. *City of New York*, 193 U. S. 430. In that case public work was directly under an official board. There was legislative authority for the construction of a tunnel specifically described as to location. It is alleged in the bill of complaint that the Board did not keep within the specific lines provided and the court says: "Jurisdiction of the U. S. Circuit Court was invoked upon the ground that by the tunnel construction sought to be enjoined, complainant was deprived of his property without due process of law, in violation of the Fourteenth Amendment. But that amendment prohibits deprivation by a State, and here the bill alleged that what was done was without authority and illegal, (the same situation in the present case). * * * Controversies over violations of the laws of New York are controversies to be dealt with by the courts of the state. Complainant's grievance was that the law of the state had been broken, and not a grievance inflicted by action of the legislative or judicial department of the state; and the principle is that it is for state courts to remedy acts of the state officers done *without the authority of* or contrary to state law [Italics mine]. *Missouri* vs. *Dockery*, 191 U. S. 165; *Civil Rights Cases*, 109 U. S. 3; *Virginia* vs. *Rives*, 100 U. S. 313."

It may be argued that complainant is not urging the violation of state law, but in effect he is, for there are California statutes legally affecting admission into the state.

See *United Mine Workers, etc.*, vs. *Chafin, et al.*, 286 Fed. 959, a case of striking similarity to the instant case. The court in this case also criticised the *Home Tel. and Tel. Co. case* (supra) much the same as did Judge Wade.

The acts of the Chief of Police, as alleged in this bill and the alleged threats and preparation for further acts under the outlined police plan, being ultra vires in nature and being unsupported by any facts making them the acts of the state, actually or colorably, this court is without any jurisdiction under the Fourteenth Amendment to entertain the cause.

It is perhaps not out of place to say that the great depression, now passing, has wrecked the economic security of many, and this condition being made unendurable by the severity of weather in states easterly of the Pacific coast states, has thrown many persons, both worthy and unworthy, into the equitable climate of California. Many of such persons are without competence, and many are physically incapacitated from supporting themselves if employment were obtainable. These facts unjustly add to the tax burden and the crime problem in the city of Los Angeles and have for such reasons justified the Chief of Police in his own mind, and he is not unsupported by many citizens, in the execution of the preventive plan herein outlined.

No one claims, and the statutes of California would not support them if claims to that effect were made, that every man "down on his uppers" and driven to move on to lands of promise and hope by the storms of the elements and economic forces is necessarily a pauper, a vagabond, or a criminal. But among the moving people it is difficult to distinguish between the well-intentioned, the incapacitated, and the vicious. The police problem is baffling and it is not too much to say that these facts have created an emergency that continues even in the face of material help from the National Government. The Chief Justice of the United States has, however, reminded us in one of his greatest opinions that "emergency does not create power".

No notice need be taken of any other pending motion.

The motion to dismiss is granted.

Exception noted.

March 17th, 1936.

APPENDIX I

Supreme Court of North Dakota (1940) 291 N. W. 281

(Appeal from District Court, Adams County; Frank T. Lembke, Judge)

Adams County *v.* Burleigh County*

Burr, Judge:

The issue as between these two counties is largely one of fact; and a brief reference to the record will disclose the only real issue involved.

The testimony taken at the hearing in this proceeding shows that prior to June 25, 1937, one Hulm, with his wife and ten children, lived in South Dakota; Hulm is paralyzed and unable to do hard labor; he came to Bismarck in April of 1937 to seek employment, and at that time was promised work, told to go back to Perkins county and to come back in two weeks' time; he came back, remained for about six weeks and was told to go back and get his family and bring them to Burleigh county, which he did on June 25, 1937: he lived in Burleigh county from that time until August 29, 1938; Hulm applied for work on W. P. A., was told he was a resident of South Dakota, and, without any order of removal from any court, the family was removed on August 29 by Burleigh county authorities to Adams county in this state; these same authorities then took them over to the office of the welfare board in Lemmon, South Dakota, told this board that they had just brought them over, but the board refused to allow the unloading of the goods, and ordered all back to North Dakota, though the family remained in Lemmon over night; on August 30, 1938, the family were "shipped back to Burleigh county" and the first night there, stopped at the place of the person that drove them to Lemmon with their goods; Hulm went to the courthouse to see the welfare board and the state's attorney, was sent by the secretary of the welfare board of Burleigh county to what was known as Hill Crest Home, where the family was fed and given lodgings; they stayed there for two days, as they were told not to leave until called for; two days later the deputy sheriff of Burleigh county called for him, took him down to the courthouse with his wife, and at that time he was handed papers (evidently copies of the order of removal issued by the district court of Burleigh county), ordering them to remove to Perkins county and was told if he would not go, he would be taken back; no opportunity was afforded him to get an attorney; they were then returned to Hill Crest Home and told to stay there and get ready to leave for Perkins county (thereafter, by virtue of the order of removal, more particularly set forth hereafter), sheriff Anstrom of Burleigh county, with his deputy, took the family and their goods from Hill Crest Home to North Lemmon in Adams County—the family in a car and their goods in a truck.

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*Mr. and Mrs. Roy Hulm appeared as witnesses before the Select Committee at its Lincoln hearings, pt. 4, p. 13777.

The testimony further shows that at the time sheriff Anstrom was attempting to obey the order of the district court to remove the dependents to South Dakota, he telephoned to sheriff Ginter of Adams county, asking him to meet him at North Lemmon on a matter of importance; that the two sheriffs met in accordance with the appointment, and at that time Anstrom stated to Ginter "he had a family there that they wanted to leave for a couple of days" and then Anstrom proceed to find a place to unload their goods, met a young man by the name of Thompson, and through him made an agreement to have the household goods of the dependents stored in a garage belonging to Thompson's mother; that Anstrom left the family in the car, unloaded the goods from the truck, placed the goods in the garage, sent the truck away, padlocked the door of the garage, and handed the key to young Thompson, telling him "to keep the key for a couple of days, and those guys will be likely to move out." Of the goods, two dressers, a bed, and a table were broken and the woman's coat lost. At that time, Roy Hulm asked what he was going to do, as he had nothing to eat, that he was broke; sheriff Anstrom gave him no answer, but "gave him $5.00 and said, 'You can eat on this for a little while; you'll be taken care of a little better later on' "; he further told him "to go across the line and get something to eat". The record further shows that at that time sheriff Anstrom unloaded the dependents from the car, left them standing on the street, just about dark, and started for home with his deputy. When leaving, Anstrom said to Ginter "he had to be going," and "Listen Ginter, we will have to leave these people here a couple of days and whatever you are out you send the amount of it and Burleigh county will take care of it." Ginter protested about leaving the family for relief as Adams county had enough to do to take care of its own needy. No one in North Lemmon would give them even temporary lodgings, and the deputy sheriff of Adams county told them to go to Lemmon and get something to eat. The authorities there immediately ordered them back into North Dakota. It was only when the deputy sheriff undertook to supply their wants that these unfortunates, having no place to go for the night, stayed in a hotel in Lemmon for one night, and for a few days in some cabins, their wants being supplied by Adams county. The deputy sheriff of Adams county ordered some bread and butter for Hulm and his wife and children, and Ginter gave them sone flour and oranges and butter; the secretary of the welfare board of Adams county gave them some foodstuff, $1.50 for lunch, and rented a place for them to remain for some time. The authorities of Perkins county served them with an order to leave, and the sheriff of the South Dakota county proceeded to remove them. Being under his care, the deputy sheriff of Adams county, who had some humanitarian instinct, chaperoned them while the sheriff of Perkins county removed them to Adams county. Adams county furnished them a home in Hettinger, and sent down to North Lemmon and retrieved their goods. Ever since the Hulms have been living upon the charity of Adams county.

It is only just to sheriff Anstrom to state that he disputes the statements made to the effect that he promised Adams county would be reimbursed, but as to this issue, the district court of Adams county found the facts as hereinbefore set forth. This finding has ample support in the record, and we see no reason for holding otherwise. They are, therefore, the facts as we find them.

It is the further claim of Burleigh county that during the year's residence in Burleigh county, the Hulms were for a portion of the time supported by Perkins county, South Dakota, under a fraudulent agreement with the Hulms to thus enable them to become citizens of Burleigh county for relief purposes. There is nothing in the testimony taken to substantiate this. It is true that in the copy of the order of removal issued by the district court of Burleigh county, there is a statement to that effect, and this copy is attached to and made a part of the return which Burleigh county made to the order to show cause. Such finding, however, is not binding in this case, so far as Adams county is concerned.

The county of Adams applied to the district court for an order to show cause, directed to the Hulms and to Burleigh county requiring them to show cause why the Hulms should not be returned to Burleigh county, and why the latter county should not reimburse Adams county for any disbursements it had made on and in behalf of the dependent Hulm and his family.

Burleigh county made a special appearance, objecting to the jurisdiction of the court to issue such an order on the ground that Burleigh county did not concede the residence of the Hulm family to be in Burleigh county, that the order requires Burleigh county to show cause why it should not pay a money judgment to be entered by the court, and that the only method to determine such a matter is through an action commenced by the service of a summons and complaint on Burleigh county. This special appearance was overruled, and in its return to the order to show cause, Burleigh county contends the legal residence of Hulm and his family was not in Burleigh county and that this had been determined by the district court of Burleigh county in a proceeding in which the order to remove Hulm and his family to South Dakota was issued.

It is difficult for the writer of this opinion to pass calmly and dispassionately upon the facts in this case and the law governing the same. One would fain suppress much of the evidence but necessary facts must be set forth. To the credit of the government of this country and the general attitude of our people toward the poor and unfortunate, it may well be said few records show any such callousness toward human beings as this controversy between South Dakota and North Dakota discloses. The case is an illustration of the extent to which "man's inhumanity to man" may be carried. Human beings are shifted around like so much cargo. Somewhere and somehow the well springs of humanity and brotherhood appeared to be dried up. Sick and impoverished creatures against whom there is no indication of crime, laziness, or willfulness, have no place to lay their weary heads, except such as the generosity of Adams county gives them as a mere subsistence in a situation not of its own making, and for which it is not responsible. The callous indifference of South Dakota seems scarcely credible in this age.

But though this may have incurred expense for Burleigh county, that county may not wash its hands of its responsibility by dumping the human freight on to Adams county. If there be any controversy between any of the counties of North Dakota and the state of South Dakota as to responsibility in this matter, it is a controversy between Burleigh county and South Dakota.

(1) The proof furnished by both counties show that the Hulm family had lived in Burleigh county for over a year. They are in this state, and as shown by the decisions of this court (*City of Enderlin* v. *Pontiac Township, etc.*, 62 N. D. 105, 242 N. W. 117; *Griggs County, etc.*, v. *County of Cass, etc.*, 65 N. D. 608, 260 N. W. 417; *County of Grand Forks* v. *DuFault et al.*, 66 N. D. 518, 267 N. W. 136; *Sisters of Mercy* v. *Ramsey County et al.*, 68 N. D. 344, 279 N. W. 759), emergency relief and such other relief as is furnished to them in North Dakota must be furnished by Burleigh county. There is no issue here as to the dependents being residents of Adams county. Insofar as the counties of North Dakota are concerned, even though Burleigh county may have been subjected by the relief authorities of South Dakota to an unjust burden, it cannot pass this on to Adams county. Clearly the officials of Burleigh county recognized this because of the agreement entered into between the two sheriffs for the temporary support of these unfortunate people. The subterfuge sought to be injected here by Burleigh county that the family was taken voluntarily to the north side of the imaginary line existing between South and North Dakota, shooed over into Perkins county, driven back into North Dakota, thereafter returning to Burleigh county, and again being taken by the sheriff to the north side of this imaginary boundary line and left with $5 and instructions to go over and get something to eat, and thereafter, when they returned they were citizens of South Dakota, does not, in any way, shift the burden from Burleigh county to Adams county. One may readily understand why the overburdened relief officers of Burleigh county were determined not to undertake obligations not resting upon them; but the primary obligation is theirs and until these needy people are returned to and received by South Dakota, their obligations to the public at large are not discharged. There is no rule of comity between the two states shown to us whereby residence is in dispute between the states may be determined. As set forth in the decision cited, the burden of support is placed by the state upon the county, and unfortunately for Burleigh county, this is the county of the dependents' residence, so far as the counties of North Dakota are concerned. As between the two counties, it is clear that Adams county is entitled to recover from Burleigh county for such sum as was actually and necessarily expended in the support of these people under the agreement made with Burleign county, and we so decide.

(2) On the order to show cause, Burleigh county made a special appearance, alleging that the district court of Adams county had no jurisdiction to issue the

order made, as no action had ever been commenced and Burleigh county did not concede the legal residence of the Hulms to be in Burleigh county. This appearance being overruled, Burleigh county made a return, denying the legal residence of the Hulms was at any time in Burleigh county, alleging that they were voluntarily removed by an employee of Burleigh county welfare board to Perkins county, but thereafter returned to Burleigh county upon the order of the welfare board of Perkins county that the question of their legal residence had been judicially determined by the district court of Burleigh county proceedings instituted against the dependents, and they were found to be residents of Perkins county, South Dakota, that an order was made requiring the Hulms to return to Perkins county, and that they voluntarily entered into Perkins county after the execution of said order.

A copy of the order of the district court is attached to the return, and in this it is shown the district court of Burleigh county found that the dependents had been sent to Burleigh county by the authorities of Perkins county upon an agreement between the county and the dependents that Perkins county would support them in Burleigh county; that this was done designedly and intentionally for the purpose of attempting to relieve Perkins county of further liability, and to enable the dependents to acquire residence in Burleigh county. The order then required the sheriff of Burleigh county to forthwith take and convey these dependents "To the state line between North Dakota and South Dakota, at a place nearest the said Perkins county, South Dakota, the place of legal residence of said defendants for relief purposes as aforesaid." The return of the sheriff is attached, showing that he took the dependents to the state line and left them there at North Lemmon in Adams county.

(3) As pointed out in *Nelson County, etc.*, v. *Williams County et al.*, 68 N. D. 56, 276 N. W. 265, the word "residence," when poor relief is concerned, has reference to the place where a person actually lives as distinguished from his domicile.

(4–6) The record here shows that during the month of August, 1938, the county welfare board of Burleigh county furnished emergency relief to the Hulms to the extent of $13.10, but by this time the Hulms had resided in Burleigh county for over a year. *County of Grand Forks* v. *DuFault et al.*, 66 N. D. 518, 267 N. W. 136, 137, is a case wherein it was claimed that the indigent persons involved were in fact residents of Marshall county, Minnesota. However, they had not received relief from Marshall county for over a year, and during that year, the poor involved had not been in any hospital, poorhouse, or other public institution, and: "None received relief from the poor fund of any county, or from the funds provided by the state or by the Federal Government, or had received a mother's pension." It was held they were residents of Grand Forks county, this being the county in which they had lived for a year after their removal from Minnesota.

Brushing aside all technicalities, and attempts at subtle distinctions, the fact remains as shown by the claims of both counties, that insofar as Adams county is concerned, the Hulms resided in Burleigh county for over a year without receiving any support whatever from Burleigh county or any other county in the state of North Dakota, and that the Hulms were forcibly removed from Burleigh county to Adams county, and left there by Burleigh county, under an agreement made by Sheriff Anstrom to pay for their support, and while in the custody of the officers of Burleigh county, expense has been incurred by Adams county for their support. These people are still in the custody of the sheriff. Had the sheriff of Burleigh county, during the time he was removing the Hulms to South Dakota, been required to remain somewhere overnight en route, he would have been required to furnish food and sleeping quarters to the Hulms during that time. Without doubt, the reasonable cost of this service would be a legitimate charge against Burleigh county in his expense account. It is clear, therefore, that Burleigh county is liable to Adams county for the support of this family, and must receive them, unless satisfactory arrangements are made between the counties themselves.

However, the amount of this support cannot be determined on this order to show cause, as it is in dispute; but this proceeding does determine that the liability for actual and necessary relief is that of Burleigh county, and unless the same is satisfactorily settled by the authorities of the two counties, Adams county is at liberty to bring a direct action to recover the full amount shown to be reasonable and necessary.

The order of the district court is modified to the extent of striking out the provisions requiring the payment of $164.73—the determination of this amount to be made later—and with this modification the order is affirmed.

Nuessle, *C. J.*, and Christianson, Morris, and Burke, *J. J.*, concur.

APPENDIX J

Excerpt on California Border Patrol from California State Relief Administration, *Transients in California*, San Francisco, 1936 (mimeographed)

I. The Border Patrol

For many years the Los Angeles Police Department has waged war against vagrants and has made it a practice to arrest persons loitering on the streets or in the public parks. There have been instances when social workers in local agencies have had to come to the rescue of law-abiding citizens thus arrested and sentenced to terms in the city jail, and instances where persons who did not speak English were arrested on the public streets as vagrants, even though they had plenty of money, because the policemen thought they looked like vagrants.

With increasing unemployment, the policemen in several of the California cities included in this Survey became more charitable in enforcing laws regarding vagrancy, but the Los Angeles police became more severe. The deputy Chief of Police in 1935 became the chairman of the Los Angeles Committee on Indigent Alien Transients. The following definition for "alien transient" was used by the Committee: "Indigent alien transient is defined as being a transient entering the State of California without visible means of support and whose legal residence is foreign to the State of California."

The Committee on Indigent Alien Transients on November 4, 1935, submitted to a group of citizens it called together, a report reviewing the situation in regard to the policy of the Federal Government, the railroads, and the State Relief Administration, and made a series of recommendations to "apply to the cases of male, unattached, adult, indigent, alien, employable transients." They stated that they considered that other transients were presenting no immediate problem.

The following were the recommendations:

"1. The establishment, by the Health Department of the State of California, of State Border Quarantine Stations for the examination of those having communicable diseases or coming from areas where epidemics are prevalent. The solicitation for this project to be made through the Los Angeles City and County Health Departments.

"2. Peace Officer Stations to be similarly situated at the points of ingress to the State for the purpose of arresting those persons guilty of violations of sections 587C and 647 P. C.: Pauper Act (Statutes of 1933, page 2005, chapter 761, sec. 12); Vehicle Code, and the Motor Caravan Act (Stat. 1935, chap. 402). Such action to be a State action, and solicitation to be made through—

(*a*) The Governor;
(*b*) Mr. Jenney, Chairman of State Relief;
(*c*) The Attorney General;
(*d*) The Director of the State Motor Vehicle Department.

"3. The establishment of camps with means of subsistence, and a very nominal wage, for employable transients who state their willingness to take advantage of such camps. The administration of camps to be—

(*a*) Preferably by the State Relief Administration;
(*b*) Secondly, by the Department of County Charities, County of Los Angeles; or
(*c*) By some local agency other than a law enforcement agency;
(*d*) That all persons applying for work in these camps be required to submit to fingerprinting, copies of which shall be furnished the local law enforcement agencies of the jurisdiction in which the camp is located;
(*e*) That the compensation be applied to the purchase of a railroad ticket to the transient's place of legal residence;
(*f*) That in connection with the work program, adequate insurance under the State Act be procured by the agency responsible therefor;
(*g*) That close cooperation be maintained between administration of the camps and the law enforcement agencies so that the latter may be informed of the discharge of any of the subjects from any of the camps.

"4. The establishment of vagrancy penal camps for those sentenced under penal provisions to be operated as follows:

(*a*) The administration of such to be by the local law enforcement agency, financed by the local jurisdiction, and the work to be performed upon public projects.

(*b*) Those working under this program to be employed upon parks, roads, etc., and that such work be administered by the agency having supervision over the property being improved.

"5. The policing of the common carriers and main arterial highways or other means of ingress into the State of California.

(*a*) That the railroads be contacted to cease the practice of transporting transients.
(*b*) That assistance to the railroads by our law enforcement agencies be offered in the policing of the trains within the borders of California.
(*c*) That the Department of Justice or the Federal Attorney General's office be solicited to cooperate with the State and local law-enforcement agencies in preventing indigent transients from entering the State of California on common carriers.
(*d*) That the same agencies be solicited in the policing of the Federal highways for the same purposes.

"6. That publicity be given of a type that will serve as a deterrent to alien transients.

"7. That the Governor of California be advised of the tentative plan of the several agencies treating with this program in the city and county of Los Angeles and that it be recommended to the Governor that the executives of the adjacent States to California be asked to cooperate with the agencies of California and its many political subdivisions in the execution of the plans heretofore mentioned, and to formulate a compact agreement between the several states to take care of the situation in the future.

"8. That a major committee to cope with the problem be formed and to consist of representatives of the following agencies or offices, to wit:

"GENERAL COMMITTEE

"*Federal.*—Department of Justice, Federal district attorney, United States marshal.

"*State.*—Assistant State director of transient activities, attorney general, California State Chamber of Commerce, chief of social records division of the L. A. C. R. A., director of L. A. C. R. A., director of motor vehicles, Governor, State director of finance, State director of transient service, State health department, State relief administrator and Work Projects Administration director, superintendent of the State bureau of criminal investigation.

"*County.*—Board of supervisors, county auditor, county counsel, county health department, department of charities, director of the district No. 11, Work Projects Administration, district attorney, public defender, sheriff's department, superintendent Los Angeles County Road Department.

"*City.*—City attorney, city council, city engineer, city health department, department of public works, mayor, Municipal court, park commission, police department, public defender.

"*Other agencies.*—California Association of District Attorneys, California League of Municipality, California Taxpayers' Association, community chest, Council of Social Agencies, Los Angeles Chamber of Commerce, major veterans' organization, Merchants' Manufacturing Association, organized labor, Peace Officers' Association of the State of California, railroads, Sheriff and Undersheriffs' Association, Southern California Economic Council.

Respectfully submitted.

HOMER B. CROSS, *Chairman.*
NEWTON KENDALL, *Member.*
LAWRENCE SCHREIBER, *Member.*
JOHN O'CONOR, *Member.*
WM. BRIGHT, *Member.*
M. D. BENESH, *Member.*"

Since the State departments mentioned did not carry out these recommendations, the Los Angeles Police Department itself decided to bar the State of California to transients without funds. The deputy chief of police made contacts with the various railroad companies in an attempt to secure their cooperation. The railroad officials agreed that representatives of the Los Angeles Police Department might search the freight trains as they crossed the border into California. Contacts were also made with the sheriffs of the counties on the border of the State and the request made that the Los Angeles officers be deputized as sheriffs of those counties. In Siskiyou, Nevada, and Riverside Counties they were deputized. Del Norte, Modoc, Plumas, and San Bernardino Counties refused to deputize them, but Los Angeles nevertheless sent officers to these counties.

On the third of February, a total of 125 Los Angeles police officers on the pay roll of the city of Los Angeles were sent out to the border points where transients might be entering the State by railroad or highway. Since California has the Pacific Ocean on the west, and Mexico on the south, most of the transients could come in only from the east or the north. Along a large part of the border, the extremely mountainous country and the deserts limited the points of entry to a comparatively few places, and 16 of these were covered by the Los Angeles police. Map C shows these points.

One lieutenant was in command of the northern area and had headquarters at Yreka in Siskiyou County. Under him were 3 squads, consisting in all of 9 sergeants and 36 officers, in charge of the work in Del Norte, Siskiyou, and Modoc Counties. In Del Norte County, a sergeant with 6 officers under him was stationed on U. S. Highway No. 101, leading down the coast from Oregon. Another squad was stationed on U. S. Highway No. 199, the road from Grant's Pass, Oreg., which meets the Redwood Highway, U. S. No. 101, near Crescent City. There is no railroad in Del Norte County.

The officers in Del Norte County were visited by a member of the survey staff in the middle of February, when there was little highway traffic due to the extremely heavy rains. The lieutenant in command had gone fishing, but sergeants and officers were interviewed. They were living in a beautiful spot in the midst of the redwood forest through which tumble some of the best salmon trout streams. Their quarters were artistic, well-furnished log cabins, which are part of a fine resort in the summertime. The woman in charge of the resort was preparing their meals. The men were working on 8-hour shifts. Two officers were on duty in an abandoned auto camp at the border, close to the plant-quarantine station on Highway 199. These men said they were not stopping any cars but only watching for persons on foot. In the wintertime few persons would travel by foot over that highway, since it was many miles between towns or any sort of habitation. The officers stated that in a 10-day period they had stopped three boys, all of whom were allowed to proceed on their way after it was found that they were going to their parents or to a job. The men at the plant-quarantine station and the officers of the State highway patrol corroborated the statement of the officers on duty that automobiles were not being stopped.

The officers on duty were practicing marksmanship. The people of Del Norte County were so unfriendly to the officers that they did not care to spend their off hours in Crescent City. The officers said that although they were not deputized as sheriffs in the county, they had a right to arrest anyone they wished, and quoted the common law that anyone may arrest a person whom he believes to be committing a crime. They were not clear as to what crimes any entering transient might be committing on the highway, but thought they might pick up a criminal. They believed the mere fact that they were stationed on the highways would keep criminals out of the State.

In Siskiyou County squads consisting of a sergeant with six officers were located at Hornbrook and Dorris. At both of these points the officers were covering not only the highways but the railroads. The Southern Pacific carries all of the traffic from Oregon into California through one or the other of these two points. A member of the survey staff visited the group at Hornbrook. Here the officers were living in a comfortable auto camp. The Los Angeles officials had made a contract so that the men received both room and meals. Two officers were living in each two-room cabin. Hornbrook is about nine miles south of the Oregon border, but is the first railway stop and the first town on the highway. There was considerable snow on the highway over the mountains north of Hornbrook and little traffic.

Although two officers were nominally on duty they were found inside their cabin before a roaring fire, writing letters, because it was raining so hard that no one was likely to go along the highway. They announced that they were stopping no cars, trucks, or busses and were questioning no women. At the time of the visit they had been 9 days at the station, but had not seen anyone walk along the highway. There were only one passenger train and one freight train in each 24 hours, going south through Hornbrook. These were being searched. The officers told the worker they had stopped and questioned 31 men who were riding on the freights. Half of these had convinced the officers that they belonged in California or had definite business there; the others had been encouraged to take the next freight north. The officers stated that on the previous day they had questioned one man and forced him to admit that he had once served a 1-year sentence in the penitentiary at Walla Walla. He had no job at the present time but was trying to find work. He had a bundle in which were some new shoes which he said had been given to him, but the officers arrested him on suspicion of burglary. They told the worker of the Survey that this man had been taken to the county jail, but at the jail the sheriff of the county reported that no one had been brought there. When the worker visited the old hotel building in Hornbrook where the officers had been fingerprinting suspects, the door was found locked.

The officers boasted that they knew how to make men tell the truth and that if they suspected a man of having a record, in 80 percent of the cases they were right. They considered anyone to have had a record if they succeeded in making the person admit having been arrested on any charge, or ever having spent a night in jail. They stated that after they made fingerprints it was at least 48 hours before they could secure a report back from Los Angeles or Washington, to which points fingerprints were sent, and obviously they could not hold all the men they suspected until reports were received. With the exception of the one man whom they had arrested, they could not tell of any definite contacts with persons with criminal records. A statement, however, had appeared in the newspapers and was being quoted in Yreka, where the officers had succeeded in making friends, that seven desperate criminals had been caught. The officers insisted that the stories that had been published about an old man who was injured by being forced to board a northern bound moving train and about a mistreated bus passenger, were untrue. The station agent at Hornbrook reported that he had observed no mistreatment of railway passengers. Other persons in the town and the State Highway Patrol officers told the worker that busses were not being stopped.

Because of the extremely bad weather the division in Modoc County was not visited, but the officers in Siskiyou County reported that they had learned by telephone that up to the middle of February no one whatever had been stopped in Modoc County, where one officer was in command. One squad with a sergeant and six officers was located at Stronghold; another squad with a sergeant and six officers was located at Alturas. The sheriff of Modoc County refused to deputize these officers and after a period of several weeks succeeded in having them withdrawn from the county.

The central area detail, with headquarters in Truckee, was in command of a lieutenant. Six sergeants and 33 officers were working under him. Men were stationed at Portola in Plumas County; Reno Junction in Lassen County; Truckee in Nevada County; Bridgeport in Mono County; and Bishop in Inyo County. There was no squad on U. S. Highway No. 50, south of Lake Tahoe, as the road was closed for the season by heavy snow.

The officers in Nevada County had been deputized by the local sheriff. Two men were at Hirschdale, a small resort just inside the California State line on the Donner Pass Highway. No cars were being stopped as far as the worker from the survey staff, who visited the station in the middle of February, could determine. The officers announced that they stopped persons walking along the highway. As there were many feet of snow and the highway was closed even to motor traffic at least half of the time, no persons were walking along the highway. The men at Truckee were searching all west-bound freight trains. These were boarded by the Los Angeles policemen when the trains stopped in the yards about a mile below the station. Officers boarded each end of the train, the two crews working toward each other thoroughly examining the corridors, empty cars, trucks and underframes, the gondolas, doors, and ice hatches. Some of the officers walked along the ground, others on top of the cars. In a 10-day period only 6 persons had been stopped. Four of these had proved California residence; the others had been made to board east-bound trains. While the worker from the survey was with the officers, one man with no documentary proof of residence was allowed to enter when he showed familiarity with certain California landmarks, but another who had a California chauffeur's license was turned back when it was found that he was not familiar with the State. The man admitted that some other transient had given him the license. The officers were making use of the law which makes it illegal to evade railway fares, and stated that it was under that law that they were able to make arrests. Half the persons whom they decided should not enter California were practically forced to break this same law by boarding an east-bound freight train.

The men on duty in Plumas County had not been deputized by the sheriff. Two men were stationed at Hallelujah Junction, the intersection of the Feather River Highway and the Reno-Susanville Road. No traffic had been stopped at this point. The detail at Portola was searching the Western Pacific west bound trains. In the first 10 days, 34 persons had been stopped, and all of them fingerprinted; 17 had been turned back. This railroad was said to be more popular than the Southern Pacific with the trespassers in the wintertime because the Southern Pacific went over the mountains at 2,000 feet higher altitude and there were more likely to be severe storms. Although few men were entering California from Nevada it was found that at least 350 transients were living in the jungles of Reno, just over the border in Nevada.

When inquiries were first made at Independence in Inyo County no one seemed to know anything about the border patrol. The sheriff at Independence and the public officials at Bishop stated that they had never heard of the patrol. These communities are extremely hostile toward the city of Los Angeles because the Los Angeles city water supply is drawn from the Owens Valley in this section of the State, and the district consequently reduced to desert. In the many lawsuits concerning these water rights the local landowners have always lost. It was found that two squads of Los Angeles policemen were working in this area, one watching the road which comes from Carson City, Nev., into Bishop, and the other on the highway from Tonopah, Nev., through Benton, Calif. The road from Tonopah was closed on the day the survey worker visited the district, February 23, because of the extreme cold and heavy snow farther east and north, and the highway from Carson City was expected to be closed for several more days. The narrow-gage railroad from Nevada into Bishop had few trains, which ran irregularly. The officers were not finding anyone to stop and some of the men had been withdrawn. One little known railroad around Death Valley was not being covered.

The southern area detail was in charge of a lieutenant with headquarters in San Bernardino. Six sergeants and 32 officers worked under him. In this division there were squads at Cadiz, Wheaton, and Kelso in San Bernardino County, at Blythe in Riverside County, and at Winterhaven in Imperial County. San Bernardino County had not deputized the officers but Riverside County had done so.

Cadiz is not a town or a community but just a railroad station in the desert on the main line of the Santa Fe Railroad which comes from Arizona into California at Needles. All trains, whether passenger or freight, stop at Cadiz for oil and water. There are about 12 west-bound trains each day. The trains do not stop between Cadiz and Needles. When the worker from the survey visited this point early in February it was found that the officers were living at a cottage camp at Chambless, on highway 66, about 3 miles from Cadiz. As on the Oregon border, the officers on duty spent a good deal of their time trying to improve their marksmanship. The officers announced that they had turned back 25 transients in 7 days. They told of making one aged colored man, who had recently been released from Folsom, board at east-bound train. He got off the train on the desert and tried to circle around to get headed back into California. They caught him and walked him into the desert until "his feet were so tender he could step on a dime and call it heads or tails." He was again put on an east-bound train.

The officers at this point claimed that they had not yet arrested anyone and that if they did so it would be necessary for them to take the person to Ludlow, the nearest jail, 45 miles away. They stated that they watched U. S. Highway No. 66 for hitchhikers, and a few days before had driven two boys down the highway to the tracks so they would catch an east-bound train. According to their account they had not turned any automobile back. The officers were searching each west-bound train, but on most of them were finding no passengers. The conductor on one train told the worker on the survey that the men were getting off at Needles, which was so full of transient men that 15 or 20 were begging at his home there every day.

Since there had been extremely heavy snow in Nevada and Utah, few trespassers were on the trains coming in through Kelso and there was little traffic through Wheaton. Kelso is a Union Pacific town in the midst of the Mojave Desert. It consists of about a dozen buildings inhabited by railway employees. The Los Angeles police officers on duty at Kelso were living in the small railway hotel. Wheaton Springs is on the main highway connecting Las Vegas, Nev., with the coast, but it consists only of a gasoline station and some cabins. The officers at this point were proceeding with caution, due to the fact that they had not been deputized as sheriffs in San Bernardino County. They stated that it was 125 miles from there to any jail, but they had arrested no one so far. This station was not being covered at night, and by the time it was visited by a member of the survey staff on February 21, only four officers were remaining at this point.

There were rumors that large numbers of men were camped in the jungles of Las Vegas, waiting a chance to get across the line into California. The survey worker who visited Las Vegas estimated that there were at least 700 unattached men in the town of Las Vegas, but only a few of these were living in the jungles. More of them were spending their nights in the gambling houses where they were allowed to sleep on chairs until 6 a. m. Many of the men told the survey worker that they were planning to enter California in trucks, one or two at a time, pretending to be helpers to the regular drivers. There are long stretches of the State border far from main roads. One of the men in the Las Vegas jungles said, "If the pioneers could get through without roads, we can get into California if we want to."

About 4 miles from Blythe the officers were stationed in what had formerly been a cold-drink stand about 15 feet from the plant quarantine station at the border. The officers were stopping cars, making no search if they were expensive cars, but explaining to the drivers that it was illegal in the State of California to carry firearms without a permit. Many people turned over their firearms to them. The officers examined the passengers to see if any of them looked like hitchhikers who had been picked up. Dilapidated-looking cars were being turned back. The officers at this point reported that in the first week they had turned back 40 cars but the number had decreased since then and by the third week, at which time this point was visited by members of the survey staff, they were turning back only one or two a day.

The officers related the story of three girls traveling in a truck with three men. The men were afraid to try to get them through the patrol. The girls had gotten out of the truck and tried to sneak around the policemen, but they had caught them. The officers decided that two of the girls were experienced prostitutes but the other was a 15-year-old runaway from Texas. This young girl they were holding and hoped to arrange her return to her parents.

Highways 60 and 70 from Arizona were said to have the largest amount of traffic in February, and all automobiles had to stop for a series of inspections. The State motor vehicle department checked regarding automobile licenses. The inspection of the State department of agriculture included examination of camping equipment, blankets, etc., to see if any insects detrimental to California agriculture might be present. The United States Immigration Department checked at this point to see if aliens were entering. The Los Angeles patrol became the fourth check.

When the worker visited this station near Blythe early in February, representatives of the Paramount News were taking moving pictures of the border patrol, and the officers said that the Metrotone News had taken pictures a few days previously. The officers at this point were interested in securing publicity so that undesirables might stay away from California. They said that they were being careful not to offend anyone who might be rich or have political influence.

Up to February 11 the officers reported that they had turned back only three families. Since the officers at this point were deputized by the Riverside County sheriff they were not afraid of making arrests. The officers talked with the people in the different cars and advised those who did not look like wealthy tourists that it would be better for them to turn around since there was no employment in California even for the residents of the State. They talked to all of the bus passengers, advising them to write East to their friends, telling them not to try to hitchhike into the State or even come in their own automobiles unless they had plenty of money. They were taking revolvers from persons in automobiles, telling them they were violating the State law about carrying concealed weapons, and the officers were suggesting that these persons write back home to tell their friends how strict laws were in California. The worker heard one boy thus deprived of his revolver, tell the officers he "sure would."

The officers claimed that they were taking fingerprints of all persons they turned back, with the exception of women and children under 18. Fingerprints were also taken of each person who had a concealed weapon. The officers were using a questionnaire form of interview for all of these persons. From February 3 up to 11 a. m. on February 11, the chart kept by the officers stationed at Blythe recorded that 44 persons had been fingerprinted. The officers said that in the first few days, when they had turned back 200 undesirables, they had not been equipped to take their fingerprints.

While the worker on the survey observed the officers at work, about half of the automobiles were allowed to pass without any inspection. A beautiful new Packard sedan with four passengers was signaled to pass, the officer turning to the worker, remarking, "You see, there's really nothing to do in that case. We would make enemies if we stopped people like that." Other fine cars, however, were stopped while the drivers were told of the law about weapons. The decision to stop cars appeared to be based upon the convenience of parking, the mood of the officer, the number of cars in line and the presence of the sergeant. An officer signaled to the side of the road an old model car in which the occupants did not appear needy, and began a conversation, "Hello, it is my duty as an officer to inform you regarding the law on concealed weapons," and then explained that the penalty for violation of the law was 6 months in jail or a $500 fine.

The approach varied according to the individual officer, but it was always courteous and convincing. Without waiting to hear the penalty, one man gave up his automatic. Three revolvers were confiscated while the survey worker was there. One man was allowed to pass with his automatic without being fingerprinted when he produced evidence permitting him to carry it. A couple with a small baby in a new 1935 Oldsmobile sedan turned over a new revolver, which the man had just purchased for $20. The officer explained that on receipt of permission to carry a gun from his local sheriff in Maine he could send to Riverside for his weapon. A discussion of firearms led to other questions, and an interview sometimes went on for 10 minutes, necessitating a conference of two officers before the car was allowed to proceed. One officer said that the people did not mind being questioned, except when they were asked about their finances. Bank books and canceled checks were sometimes requested as evidence of financial security.

Two young hitchhikers slowly trudging their way east, stepping as though their feet were sore and their backs tired from carrying a suitcase and a bundle, caught the eye of an officer. "Keep right on going—don't stop," was the parting farewell shouted at them by the police as they crossed the Colorado River bridge into Arizona.

A 1927 Pontiac sedan, laboring under the weight of five passengers, a pile of cartons filled with food, dishes, and old clothing, and extra luggage tied on the running board, halted for inspection. Two flat tires with an inner tube half out were strapped on the back as spares. Old tools, a jack, pliers, and a wrecking bar, which the officer inspected closely as possible "concealed weapons," were strewn on the floor, partially covered by old, soiled blankets and overcoats. All the passengers, two young girls, a young boy, and two middle-aged men, wore dirty clothes spotted with oil and grease. The driver, the most slovenly of all, even had his shoes unlaced, as he "felt more at home" that way. He said he operated a dray line in a certain town in Ohio and had sufficient money for the group and could wire for more. His brother-in-law, two nieces, and the young bridegroom of one of the girls were "really on a honeymoon for the young couple" and might spend only 2 days in California, traveling then to Nevada. After they left, the officer remarked, "We should have turned them back but we can't quite do it."

Shortly after the departure of the Pontiac, a 1929 Ford roadster, dripping water and oil, with a home-made trailer attached, came to a stop under the canopy. A 1935 New Mexico license, battered and covered with dust, revealed the State of origin. When the regular inspection was completed, the police beckoned them to halt. The old car, lacking paint in spots, spattered with oil-soaked dust, and probably not washed for a year or so, was equipped, like the trailer, with new tires. The worker counted the occupants twice to make certain that the family totaled nine. The little one-seated car was crowded with the father, a 16-year-old son, a 3-year-old boy, and the mother with a year-old daughter on her lap—all jammed in the seat. The cover to the baggage compartment had been ripped out and converted into a rumble seat for the three daughters, 5, 12, and 14. The oldest boy, 18, sat alone in the middle of the trailer. Heaped around him were what appeared to be all the worldly possessions the family owned. A white canvas covering hid from view all but a coffee pot, a tea kettle, a lantern, and the barrels of a .22-calibre rifle and a 12-gage gun. The trailer, about 8 feet long, mounted on two wheels, was still new, and the lumber showed little sign of road wear or hard weather.

A check with the police revealed that the family were coming to California for the first time, to see the wife's sister. They had $30 in cash. The two officers working jointly on this case, advised the family of the difficulty in securing employment and told of the thousands already on relief in Los Angeles. The captain of the highway patrol happened to be present, and he informed the travelers that it would cost $20 to clear the licenses on the car and trailer. The family had little to say, so the policeman remarked as he ceased the attack, "Think it over—make yourself at home." For 10 minutes or so the scene was tense. The mother, clothed in a well-worn spring coat, clutched her baby girl to her as she broke out in sobs. The two oldest girls, wearing only light cotton dresses, shed a few tears. The 5-year-old sister jumped around, not knowing what it was all about. The boys sat quietly, staring into space, waiting for their parents to decide. The police continued their attack, but this was too much for the father and mother. "If only," she said, "I could see her (the sister)—I don't care so much if we can't stay here." The father, unshaven and unwashed, with a ring of tobacco juice around his lips, silently crowded the others over and took his place behind the wheel. The battery was low and the motor did not respond, but when it did it sounded as if it, too, was "undesirable" and in need of assistance. With a weak threat to call his brother-in-law and have him come to Arizona and take them across the line into California, he turned the Ford around, and the family of nine from general delivery, ———, N. Mex., went back over the road they had traveled about an hour before, having denied the police the privilege of fingerprinting them as "not wanted in California."

The police squad on duty near Winterhaven, just across the bridge from Yuma, Ariz., had added two extra officers just before the place was visited by a worker from the survey on February 11. The officers were using a part of the quarantine station of the State department of agriculture as an office. A few days later they were asked to move out, and then used the dilapidated Winterhaven jail as headquarters. The police officers were living in the hotel at Yuma and seemed to have made friends with the townspeople there. The officers described a man in Navy uniform who had been detained on a previous day because of different names on letters in his pocket and on the liberty card from a United States destroyer at San Diego, which he carried. A Mexican traveling with him said he was not a real sailor. The Mexican was held for deportation. The man in uniform was sentenced to 7 days in the Winterhaven jail, which he was forced to clean. In the meantime his fingerprints were sent to Los Angeles to determine if he had a criminal record. Another man who had been found to have burglary tools in his possession when he was taken off a freight was also confined in the Winterhaven jail.

While the worker watched, about eight or nine hitchhikers were counted but allowed to proceed into California. Why this number were allowed to enter was not clear to the survey worker. A train bound for a short trip into Mexico before continuing on into California had no trespassers. It was stated that the Mexican officials were so rough with trespassers that few attempted to ride.

On another train were five trespassers. A Mexican girl of 16 and a Mexican boy of 19 were detained by the officers while the others were allowed to proceed. The girl was short, dark, stocky, and dirty. She wore a soiled house dress and long, grimy tweed coat. Her black, unkempt hair hung in wisps to her shoulders. She remained apathetic during a half hour of questioning by the police, and answered rather sulkily. The boy was dark, thin, and somewhat stooped. He was well dressed and clean. Both were spoken to separately by the policeman, who was patient, kindly, and intelligent. The couple left El Paso Sunday night after the girl had had a quarrel with her mother. (This was Tuesday and El Paso is 725 miles from the California border.) She said there were five children in her family. The father was unemployed, but the mother and one of the boys were working and able to care for the family's needs. The girl had completed 2 years of high school. She was en route to Los Angeles to her cousin who was working in a factory, and she was certain she would have no difficulty in finding work too. This was the first time she had left home and she was not aware there was anything wrong in traveling across the State line with a man. When they left El Paso they had more than a dollar between them and they still had 30 cents. They said they were not hungry and they carried a pint jar of peanut butter, so that their money would not give out too quickly. They were held more than an hour before several policemen, after consultation, decided to release them after fingerprinting the boy. They were warned that they were to return to El Paso immediately or they would both be sent to jail. They were escorted to the Arizona State line and watched until they had disappeared down the road.

On February 13 a worker reported that a few hitchhikers attempted to cross the border. Some of them were able to convince the officers that they had a right to do so. One family of nine, with a dog, traveling in two trucks, was delayed several hours by the officers but finally allowed to proceed since they had plans, some money, and expectation of work in Kern County.

The police looked over the passengers of a Los Angeles Gray Line bus when it stopped for the baggage inspection at the agriculture quarantine station. The police asked the driver whether any of the passengers were taking a short ride. This would have placed them under suspicion for paying fare from the nearest point in Arizona to the nearest one in California in order to evade the patrol. There were no short-ride passengers, according to the bus driver.

In the evening the special assistant to the deputy chief of police arrived to make an inspection of this territory. The lieutenant in charge of the southern division, and the sergeant in charge of this station and four officers of the detail, a deputy sheriff and a railway detective, made up the inspection party. A freight was due at 6 p. m. but actually arrived at 7.

As the powerful freight crept by, the engineer waved and the train came almost to a standstill traveling at a rate not exceeding 5 miles an hour. It was a very impressive sight. Darkness had just settled, and the detail was equipped with powerful flashlights. As the train passed the central point, the officers began their search. Several jumped on the front of the train, others waited until approximately half of the 75 cars had gone by, and then boarded. In the meantime, several additional officers stationed farther down the track boarded the rear end. The train picked up speed slightly and proceeded onward, still however, very much in leash; it did not exceed 15 miles an hour. As the last car reached the inspection station there was a crunching of brakes and the train came to a standstill. The cordon of officers returned to the central point.

The raid had netted them two dirty, tired, lone individuals, obviously affected by the cold and fear. One, a Mexican, spoke very little English. He stated that he was born in Texas, and had lived most of his life in San Antonio. He had finished the fourth grade in school. A complete search revealed only a few matches, a tortilla, and a piece of cord. He was unable to explain why he was coming into California, and in fact it was only with the greatest difficulty that he could make the police understand his name and former residence. He was offered no opportunity to decide whether he wished to risk jail or return, but one of the officers took him by the arm, stating, "Let's take a walk, buddy," and they disappeared in the darkness toward the bridge that separates Yuma, Ariz., and California.

The other man soon gained self-possession. He stated simply that he was a seaman, had shipped from San Francisco to New York and was en route to San Francisco to ship again. He showed his discharge papers, and as the evidence offered was satisfactory he was not molested any further but was permitted to reboard the train. From somewhere in the darkness emerged two additional figures. One man was en route to San Pedro to reenlist in the Navy; the other was a young boy, probably 17 or 18, who had left Long Beach that morning intending to take a trip East, but had changed his mind and now wished to return. These men spoke to the sergeant and were told to get on the train. During all of this questioning and searching, the train had not moved.

As soon as the Los Angeles police sent men out to the 16 locations near the State line, the border patrol received a great deal of publicity in the newspapers. According to newspaper accounts there were protests from such organizations as the Civil Liberties Union and the American Association of Social Workers, from the Governor of Nevada, the attorney generals of Arizona and Oregon, the City Commission of Phoenix, Ariz., the officials of Portland, Klamath Falls, Grant's Pass, and Roseburg, Oreg., the chief of the California Highway Patrol, and many private individuals. Two members of the California Senate were stopped and subjected to questioning by the officers at Blythe. Eastern newspapers and magazines ridiculed the State for allowing such a thing to happen. The newspapers of Northern and Central California were bitter regarding the power of a southern California city. Local taxpayers in Los Angeles protested the expense of maintaining 125 men hundreds of miles outside of Los Angeles City, in addition to paying their traveling expenses and salaries. The chief of police claimed that he was protecting the city from an influx of criminals, and stated that 65 percent of those stopped had criminal records. He admitted to a member of the survey staff that he considered anyone to have a criminal record if he had ever been arrested for vagrancy or spent a night in jail. He was not willing to allow a worker from the survey to examine the information in his office regarding the patrol.

The attorney general of California, in a reply to a request from the Los Angeles Chamber of Commerce for endorsement of the blockade, stated that the police of

Los Angeles had "no jurisdiction beyond the city's territorial limits * * *. Under provisions of the political code of this State no person is eligible to the position of a deputy sheriff in one of the counties of this State, except he be an elector of such county * * *. As between the States, the right of citizens to ingress and egress has very generally been recognized and upheld * * *. Government no more than the individual can justify the reaching of even proper ends through unlawful means." The entire letter is included in appendix B.

Among the persons stopped by the police was John Langan, a resident of California who had been in Arizona on business and was returning to his home on February 10. He sued James E. Davis, as chief of police of the city of Los Angeles, in the Federal court, asking that Chief Davis be enjoined from "stopping, molesting, questioning, fingerprinting, arresting, or otherwise interfering with plaintiff entering California, or with plaintiff traveling in California, or with plaintiff traveling between any of the States bordering on California." The complaint states that Mr. Langan "was stopped, taken in custody, molested, questioned, and threatened ejection from the State unless he did then and there prove to the policemen's satisfaction that he was not a resident of another State and was not an undesirable citizen. Mr. Langan was, at the time, in pursuit of his lawful business, which frequently calls him across the State lines of California, had committed no crime nor was he accused thereof, and the officers possessed no warrant for his arrest. Langan claims that he was thereby deprived of his constitutional rights as guaranteed by the fifth and fourteenth amendments to the Constitution of the United States. He also claims that he has suffered a money loss of $5,000."

The case was heard in the central division of the Southern California District Court of the United States on March 17, Judge Stevens presiding. The judge decided that the fifth amendment to the Constitution, which states that no one may be deprived of liberty without due process of law, did not apply. The State courts have jurisdiction regarding differences between its citizens, and in this case both parties, that is both Mr. Langan and Chief Davis, were citizens of California. The case would therefore have to be heard in the State court unless the State was accused. In this case the State was not accused, but an individual. The officers detaining Mr. Langan, according to the judge, were not acting as Los Angeles policemen but as deputy sheriffs of Riverside County.

The fourteenth amendment to the Constitution, which states that no State may deprive one of liberty or deny the equal protection of the laws to its citizens, could not apply because the complaint was not directed against the State and Chief Davis was not acting under authority of the State. The case was therefore dismissed.

Newspapers reported that in addition to the border patrol the police officers were searching the rooming houses in Los Angeles, dragging persons from their beds and telling them they must leave town. No evidence was found by workers on the survey to support this. However, it was found that the police were sending into other States many persons who had already entered the State of California.

A worker on the survey was in the desert town of Indio on February 10. The Journal of a Transient records: "I learned that a freight was pulling out for Yuma, at 7:30 that night, and was waiting in the yards for it when it came in. When the train stopped a Los Angeles police automobile pulled up near the caboose and unloaded boxes of sandwiches. The doors of the last two boxcars were opened and 100 or 150 boys and young men hopped out and lined up to be fed. Two Los Angeles policemen were in the cars in charge of the mob. Most of these boys had been taken out of Lincoln Heights jail, and put on the train under supervision of Los Angeles authorities. A few had been picked up along the way, they said. There was much joking among the boys and the policemen about their "pullman ride" home to Texas or Oklahoma. I saw one boy in the crowd to whom I had talked in the Los Angeles jail. He had told the police he was from Phoenix, but had told me his family lived in Portland. He was an overgrown 16-year-old runaway. I saw 50 or 75 more riders as I walked up the track beside the train, and when it started to pull out, I got on a flat car with 15 other boys and men. On this car were 3 Ohio boys of high-school age, traveling together, who had ridden this same train all the way from the Oregon border. In that distance all the food they had eaten was two loaves of dry bread which they had bummed while the train was stopped in Bakersfield. In Colton one of them had bummed about 10 pounds of dry beans. These they expected to cook in the Yuma jungles when they got out of reach of the 'tough California bulls.' All the way from Indio to Yuma they talked of the big 'bean banquet' they would have. It was too cold to sleep on the flat car, and we all huddled together to keep warm. The three boys from Ohio amused themselves by swapping shady stories and singing popular songs. Their use of English and their conversations in general indicated good educational backgrounds, and some of the stories they told were too subtle for most of the men to catch.

"The train rolled across the Colorado River bridge at midnight, and as it slowed down going into the Yuma yards, I counted 19 Los Angeles and Yuma policemen lined up along the track to greet the new arrivals. Several of them boarded the train before it stopped and took charge of all the bums who were riding. As one of the Yuma cops hopped on our flat car he swept the crowd with his flashlight, counted them, and said: 'Now you birds stay on this train, and if any of you try to get off her we'll burn your goddamned tails till hell won't have you.' He went on to say that this was a through freight and we were all going to be held on it across the State of Arizona. One of the three boys with the beans told the policeman that they were about to starve and would like to stop long enough to 'cook up.' He asked if they couldn't be put in jail and fed. 'Hell, no,' the cop answered, 'didn't I just tell you not to get off this train?'

"When the train stopped, we were lined up along the track with 10 or 12 other men and searched by 2 cops. We were then marched back to the cars where the kids were locked in and told to get in with the others. At the rear of the train we were met by an officer in a khaki-colored uniform who was addressed by the cops as 'chief.' I approached him and told him that I was a California resident and had ridden into Yuma by mistake, thinking that this train came by El Centro where I had a job. He asked me if I had any identification, and I showed him a California driver's license. He told me to 'get the hell back to California then,' and he sent one of the cops with me to escort me across the bridge and to see that I did not stop in Yuma. I asked my escort how long he thought the border patrol would last. He said it would be permanent and that the railroads were going to put all trains under strict guard again to keep the bums off the trains.

"At the west end of the bridge I was stopped by three Los Angeles policemen who asked a few questions and let me pass, after taking down my name and address from my driver's license. They showed no inclination to be hard-boiled.

"I walked down the highway through Winterhaven and found a place to sleep in the tall grass and sagebrush by the roadside. I dreamed for the rest of the night of piles of tempting food being cooked over a jungle fire while I was tied to a nearby tree by a policeman."

The report on "indigent alien transients" made by James E. Davis, chief of police, on March 11, 1936, speaks of the border blockade as a great success because it had saved the State millions of dollars and given Nation-wide publicity. It stated: "Perfect harmony exists between our officers and the local enforcement agencies of the localities where our patrols are operating."

An analysis of other parts of this report reveals much irrelevant data. One table shows the total of major crimes and total crimes committed in Los Angeles, which shows a decrease for the past 3 years. Other tables show that the number of transients coming into the State was increasing during this period. If these two sets of figures have any connection they would seem to indicate that an increase in transients leads to a decrease in crime, a conclusion which even the friends of transients would scarcely draw.

The figures compiled by the statistician of the police department regarding "foreign transient activities" show that although a considerable number of technical arrests of persons evading railway fare or on vagrancy charges were made by the border patrol, up to March 9 only six persons had been arrested on any more serious charge. While the statement was made that 48 percent of the transients had previous criminal records, it will be noted from the table that there were only 272 persons with records although contacts were made, according to the figures of the department, with 7,984 persons. It should be kept in mind that the police department considered anyone to have a previous record who had ever been arrested for any reason, including arrest for simple vagrancy (lack of funds), or arrest for minor traffic violations.

TABLE 32.—*"Foreign transient activities" of Los Angeles Police Department*

	Total	Southern area	Central area	Northern area
Total technical arrests made	567	370	71	126
Evading railroad fare	155	46	20	89
Vag roamer	406	321	50	35
Others	6	3	1	2
Previous record:				
Number	272	166	48	58
Percent	48	45	68	46
Entered:				
Via railroad	443	303	54	86
Via highway	930	896	12	22
Total leaving State	6,044	5,054	300	690
Sent back	1,373	1,199	66	108
Leaving voluntarily	4,671	3,855	234	582

NOTE.—Transients picked up locally by Los Angeles Police Department and deported out of State, 742.

Source: Figures compiled March 9, 1936, by Rhoda Cross, statistician. Los Angeles Police Department.

The chief of police, on March 11, recommended that the work of stopping transients at the border be carried on (1) by various departments of the State government, including the department of motor vehicles, the board of equalization (in connection with the collection of the tax on caravan cars), the department of agriculture (in connection with plant quarantine), the State department of health by establishing border quarantine stations; (2) through agreements with authorities from other States; (3) by the counties whose supervisors should make appropriations for additional deputy sheriffs and secure State grants to counties for additional sheriffs; (4) by the railways which should employ additional special agents; and (5) that the State relief administration should take "action in accordance with policy of this agency."

It may be noted that a recommendation was not made that the Los Angeles Police Department should continue its activities. About the middle of April all of the Los Angeles officers were withdrawn from the border of the State.

APPENDIX K

COMPILATION OF ALL STATE ANTIMIGRATORY LEGISLATION, INCLUDING EXCLUSION LAWS AND REMOVAL STATUTES

ALABAMA CODE (1940)

SEC. 19. *Offense in bringing paupers into state.*—Any person who shall bring or remove or cause to be brought or removed any poor person from any place without this state into any county or municipality within it, with the intent of making such county or municipality chargeable with his support, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than three hundred dollars; and the justice or court before whom such person shall be proceeded against for a violation of the provisions of this section shall, by its judgment, require of such person satisfactory surety that he will, within a reasonable time to be fixed, transport such person out of the state, or indemnify such county or municipality for all charges and expenses which have been or may be incurred in his support; and, in case of neglect or refusal so to do, may sentence such person to hard labor for the county or municipality for a term not to exceed three month (1927), p. 521.

SEC. 20 (2806) (1617) (3238) (1470) (1746) (1465) (1219). *Captains of vessels bringing paupers to the state to give bond; penalty for breach; penalty for refusal.*—Any person commanding any vessel which brings into this state any infant, lunatic, maimed, deaf, dumb, aged, or infirm person, who is likely so become chargeable to any county, may be brought before any judge of probate, and if such judge is satisfied that such person will probably be a charge to any county, he must require such master to enter into bond, payable to the state, with sureties resident in the state, to be approved by such judge, in the sum of five hundred dollars for each of such persons so brought, conditioned to pay all such expenses as any county in the state may incur in the support of such person; which bond must be filed and kept by such judge, and, on its condition being broken, may be sued on, and a recovery had in different actions to the amount of the penalty thereof, in the name of the state, for the use of the county, and on failure to give such bonds, the judge must commit such master to jail until he gives the same, or is otherwise discharged by law.

Sec. 14 (2792) (1603). *Strolling paupers removed, and, if sick, relieved.*—In case any pauper shall leave the county in which he may have a settlement, and remove to another county, the county governing body, or any member thereof, may make an order to remove the pauper back to the county from which he came, directed to any constable to execute. But if the pauper be sick or disabled, so that he cannot be removed, he shall be provided for in the county in which he may be found until he can be removed. And it shall be the duty of the governing body of the county to which any pauper belongs to receive him, on his removal, and provide for him as in other cases (Ib.).

California Welfare and Institutions Code (Deering, 1937)

Sec. 2502. *Right to incur expense in returning nonresident indigent to place of residence.*—If no other funds are available for the purpose, a county may incur all necessary expenses in transporting a nonresident indigent to another State or county when information at hand reasonably tends to show that the person has a legal residence in such State or county.

Sec. 2503. *County responsible for indigent may agree to support him in county wherein he resides; agreement not to alter legal residence; record to be furnished department.*— Whenever the respective boards of supervisors deem it best for the welfare of a family or in the public interest that an indigent remain in a county not responsible for his support, the county responsible for the support of the indigent may agree to support him in the county not so responsible; but no indigent supported in this manner shall be deemed to have acquired a residence in the nonresponsible county. Such agreement shall be made by the responsible county with the nonresponsible county, and a record or copy thereof shall be sent to and filed in the office of the State Department of Social Welfare.

Sec. 2550. *Requirements generally.*— Except as otherwise provided in this chapter, a person, in order to be entitled to aid, shall be a resident of the State and of the county wherein application is made.

BRINGING INDIGENT INTO THE STATE

Sec. 2615. *Willful act a misdemeanor.*— Every person, firm, or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor.

California Penal Code (1939)

Sec. 19. *Punishment of misdemeanor, when not otherwise prescribed.*— Except in cases where a different punishment is prescribed by any law of this State, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months or by fine not exceeding five hundred dollars, or by both (1933: 2216).

Colorado Statutes, Annotated, Chapter 124

Sec. 10. *Bringing paupers into county—Liability.*—If any person shall bring and leave any pauper or paupers in any county in this state, wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of two hundred dollars for every such offense, to be sued for and recovered by and to the use of such county, by action of debt, before any court having competent jurisdiction; and the suit may be brought in the county where the pauper was so brought and left, and the process may be directed to and served by any proper officer in any county in this state (G. S., § 2537; G. L., § 2003; R. S., p. 496, § 9; R. S. '08, § 4798; C. L., § 8914).

The intention of the legislature in enacting this section was to punish any person who, knowingly and intentionally, caused a pauper to be taken from the county where domiciled and transported to another, with the knowledge and intention of relieving the county of domicile from a charge of support, and making the person a charge upon the other county (*Board of County Com'rs* v. *Law*, 3 Colo. App. 328, 33 p. 143).

Person must be a pauper within legal definition of word. In order to warrant a conviction under this section it must appear beyond controversy that the person was a pauper within the legal definition of the word, had legal domicile in the county from which the removal was made, and not in the county to which he was taken or sent, and a knowledge of the facts by the person charged from which the intention, if not expressed, could legally be implied (*Board of County Com'rs* v. *Law*, 3 Colo. App. 328, 33 p. 143).

In cases under this section intent is an element of the offense (*Board of County Com'rs* v. *Law*, 3 Colo. App. 328, 33 p. 143).

SEC. 7. *Notice to proper county—Relief—Liability.*—If any person shall become chargeable in any county in which he or she did not reside at the commencement of the six months immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of by the county commissioners where he or she may be found, and it shall be the duty of the clerk of the county commissioners to send notice by mail to the clerk of the county commissioners of the county in which such pauper resided as before stated, that said person has become chargeable as a pauper, and requesting the authorities of said last-named county to remove said pauper forthwith, and to pay the expenses accrued in taking care of him, her, or them (G. S., § 2534; G. L., § 2000; R. S., p. 495, § 6; R. S. '08, § 4795; C. L., § 8911; L. '31, p. 676, § 2).

CONNECTICUT REVISED STATUTES (1930)

SEC. 1691. *How persons settled in other towns are removed.*—When any person having a settlement in any town in this state shall go to reside in some other town, and, before he shall have gained a settlement in the town to which he has gone, he or any of his family shall become chargeable, the selectmen, after giving notice to the town to which such pauper belongs to remove him and his family and on failure of such town to make such removal, may apply to any justice of the peace, who shall issue his warrant, directed to either constable of the town where such pauper is, commanding such constable to remove such pauper to the town where he has his settlement. Such constable shall execute such warrant, and the lawful fees for the service of the same at the rate allowed for service of criminal process shall be paid by the town to which such pauper belongs.

SEC. 1690. *Deportation.*—When any person who is an inhabitant of some other state or country shall come to reside in any town in this state, and shall become chargeable or make application for aid during the first year of his residence in such town, the selectmen, or, in the case of a state pauper, the state agent, may, at any time during such period or within sixty days thereafter, apply to any justice of the peace therein, who shall issue his warrant to either constable of such town, any state policeman, or other proper officer, ordering him to transport such pauper to the place in the state or country whence he came to this state, or to the place of his former residence, at the discretion of the selectmen or the state agent applying for such order. Such officer shall execute such warrant, and the expense thereof, having first been audited and approved by the selectmen, shall be paid by such town, or, if such application was made by the state agent, the expense shall be audited by the state agent and paid by the state. The word "selectmen," as used in this section, shall be construed to include any other officer or board which, instead of the selectmen, lawfully exercises the powers and duties of overseers of the poor.

SEC. 1692. *Forfeiture for bringing indigent person into a town.*—Each person who shall bring into and leave in, or cause to be brought into and left in, any town in this state, any indigent person who is not an inhabitant of such town, and who shall become chargeable within one year after having been so brought into and left in such town, shall, on demand of the selectmen thereof, remove such indigent person out of such town to the town from which he came; and, if such person so bringing and leaving, or causing to be brought and left, such indigent person in any town in this state as aforesaid, shall, on demand of the selectmen of such town, fail to remove such indigent person out of such town to the place from which he came, he shall forfeit and pay to the town in which such indigent person shall have been left, the sum of seventy dollars; and, if such indigent person shall have been so brought and left in such town, with the intent on the part of the person so bringing and leaving him, or causing him to be so brought and left, to make him chargeable or any expense to such town, such person so bringing and leaving, or causing to be so brought and left, such indigent person, shall forfeit and pay to the town, into which such person shall have been brought and left, the sum of one hundred dollars and all the expenses incurred by such town in the maintenance of such indigent person.

CONNECTICUT REVISED STATUTES (SUPP. 1935)

SEC. 667c. *Interstate transportation.*—The commissioner of welfare is authorized to enter into reciprocal agreements with other states regarding the interstate transportation of poor and indigent persons and to arrange with the selectmen for the acceptance and support of persons receiving public aid in other states in accordance with the terms of such reciprocal agreements.

CONNECTICUT REVISED STATUTE (SUPP. 1939)

SEC. 559e. *Deportation.*—When any person who has a legal settlement in some other state or country shall come to reside in any town in this state, and shall become chargeable or make application for aid, the selectmen, or in the case of a state pauper, the commissioner of welfare may apply to any justice of the peace of the town wherein such person becomes chargeable or has made application for aid, or to any court having jurisdiction, and such justice or such court shall issue a warrant to either constable of such town, any state policeman, or other proper officer, ordering him to transport such person to the place in the state or country whence he came to this state, or to the place of his former residence, at the discretion of the selectmen or the commissioner of welfare. Such officer shall execute such warrant, and the expense thereof, having first been audited and approved by the commissioner of welfare, shall be paid by the town, or, if such application was made by the state agent, the expense shall be audited by the state agent and paid by the state. The word "selectmen," as used in this section shall be construed to include any other officer or board which, instead of the selectmen, lawfully exercises the powers and duties of overseers of the poor.

FLORIDA, COMPTROLLER GENERAL LAWS (1927)

SEC. 8003. *Landing sick seamen or paupers in the seaports of the State.*—If any master or commander of any ship or vessel shall discharge or cause to be put ashore any sick or disabled sailor or sailors belonging to his ship or vessel, not entitled to his or their discharge, by the contract between them, or any servant, without taking due care of his or their maintenance, and cure, or who shall land from any such ship or vessel any pauper or vagrant, without the means of procuring his or her or their maintenance for the space of one month in any port of the State of Florida, he shall be fined in a sum not more than one hundred dollars, or be imprisoned for a period of not more than sixty days (Ch. 4593, Acts 1897, sec. 1).

GEORGIA CODE, ANNOTATED (1935), TITLE 23, CHAPTER 23–23

SEC. 23–2305 (557). *Persons removing paupers, liability.*—When any inhabitant of any county, city, town, or village in or out of the State sends a pauper to some county in this State, by paying the expense of transportation, or otherwise has him removed for the purpose of burdening some other community, the person doing so shall be personally liable for the support of the pauper in the county where he locates.

SEC. 23–2306 (558). *County liable, when.*—If the person so engaged in transporting a pauper is insolvent, or does not respond to such demand from any cause, the county from which the transportation took place shall be liable.

SEC. 23–2307 (559). *Paupers left by migratory companies, etc.*—If any person commanding any vessel, or the manager or proprietor of any theatrical, circus, or any other migratory company, or their agent, or any person passing or moving through this State shall bring and leave or abandon herein any infant, lunatic, maimed, deaf and dumb, blind, aged or infirm person, who is or is likely to become chargeable to the county, he may be brought by warrant before any judicial officer.

ILLINOIS STATUTES, ANNOTATED (SMITH-HURD, 1935), CHAPTER 107

SEC. 13. *Bringing pauper into county—Penalty.*—If any person shall bring and leave any pauper in any county in this state, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of $100 for every such offense, to be sued for and recovered by and to the use of such county by action of debt, before any justice of the peace in the proper county (1874, March 23, R. S. 1874, p. 754, sec. 13).

ILLINOIS STATUTES, ANNOTATED (SMITH-HURD SUPP. 1940), CHAPTER 107

SEC. 16. *Residence requirements—Removal of pauper from city, township, or county.*—No city, village, incorporated town, county, or township required by this Act to provide relief and support to residents therein shall furnish such relief or support to any person who did not reside therein for a period of three years immediately preceding his application for relief and support. If, however, any person did, for said three year period, reside in some other city, village or incorporated town in this State charged with the relief and support of poor and indigent persons or some other county or town in this State, it shall be the duty of the overseer of the poor of the municipality, county or town, as the case may be, to send written notice by mail or otherwise, to the overseer of the poor of such other city, village or incorporated town in which such pauper so resided, or, in counties not under township organization, to the county clerk of the county in which the pauper so resided, or, if he then resided in a town supporting its own poor, to the overseer of the poor of such town, requesting the proper authorities of such city, village or incorporated town, county or town, as the case may be, to remove said pauper forthwith, and to pay the expenses accrued or to accrue in taking care of the same; and such city, village or incorporated town, county or town, as the case may be, where such pauper resided, shall pay to the city, village, incorporated town, county or town, in the event it takes care of such pauper, all reasonable charges for the same, and such amount may be recovered by such city, village or incorporated town, county or town, as the case may be, in any court of competent jurisdiction (as amended 1935, July 11, Laws 1935, p. 1055, sec. 1; 1936, March 6, Laws 1935–36, Second Sp. Sess. p. 73, sec. 1; 1939, July 26, Laws 1939, p. 828, sec. 1).

INDIANA STATUTES, ANNOTATED (BURNS, 1933), TITLE 10, CHAPTER 46

SEC. 10–4601 [2865]. *Pauper—Bringing into state.*—Whoever, knowingly, brings within this state a pauper with the intention of making him a charge upon any of the counties of this state, shall, on conviction, be fined not less than ten dollars [$10.00] nor more than one hundred dollars [$100] (Acts 1905, ch. 169, Sec. 634, p. 584).

INDIANA STATUTES, ANNOTATED (BURNS, SUPP. 1940), TITLE 52, CHAPTER 1

SEC. 52–164. *Removal of nonresident poor—Justice of the peace—Procedure.*—Upon complaint of any overseer of the poor, any justice of the peace may, by his warrant directed to and to be executed by any constable, or by any other person therein designated, cause any poor person found in the township of such overseer, likely to become a public charge and having no legal settlement therein, to be sent and conveyed, at the expense of the township to the place where such person belongs, if the same can be conveniently done; but if he or she cannot be so removed, such person shall be relieved by such overseer whenever such relief is needed (Acts 1935, ch. 116, Sec. 21, p. 432).

IOWA CODE (1939)

SEC. 3828.091. *Importation prohibited.*—If any person knowingly bring within this state or any county from another county in this state any pauper or poor person, with the intent of making him a charge on any of the townships or counties therein, he shall be fined not exceeding five hundred dollars, and be charged with his support (C51, sec. 2736; R60, sec. 4379; C73, sec. 4045; C97, sec. 5009; C24, 27, 31, 35, sec. 5314).

SEC. 3828.090. *Foreign paupers.*—1. Any person who is a county charge or likely to become such, coming from another state and not having acquired a settlement in any county of this state or any such person having acquired a settlement in any county of this state who removes to another county, may be removed from this state or from the county into which such person has moved, as the case may be, at the expense of the county wherein said person is found, upon the petition of said county to the district or superior court of that county.

2. The court or judge shall fix the time and place of hearing on said petition and prescribe the time and manner of service of the notice of such hearing.

3. If upon the hearing on said petition such person shall be ordered to remove from the state or county and fails to do so, he shall be deemed and declared in contempt of court and may be punished accordingly (C51, sec. 811; R60, sec. 1379; C73, sec. 1354; C97, sec. 2225; C24, 27, 31, 35, sec. 5313).

Sec. 3828.073. *"Poor person" defined.*—The words "poor" and "poor person" as used in this chapter shall be construed to mean those who have no property, exempt or otherwise, and are unable, because of physical or mental disabilities, to earn a living by labor; but this section shall not be construed to forbid aid to needy persons who have some means, when the board shall be of opinion that the same will be conducive to their welfare and the best interests of the public (C97, sec. 2252; C24, 27, 31, 35, sec. 5297).

Kansas General Statutes, Annotated (Corrick, 1935)

Sec. 39–338. *Unlawful to send certain persons into another county, when.*—It shall be unlawful for any person either directly or indirectly to send or be instrumental in sending or causing to be sent out of the county where such person properly belongs, any pauper or person who is or is likely to become an object of public charity, into any other county of this state, except in the manner provided for in this act (L. 1862, ch. 163, § 39; June 30; G. S. 1868, ch. 79, § 39; R. S. 1923, § 39–338).

Sec. 39–339. *Penalty for violating § 39–338.*—Any person who shall violate the provisions of section 39 [39–338] of this act shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not exceeding one hundred dollars, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment (L. 1862, ch. 163, § 40; June 30; G. S. 1868, ch. 79, § 40; R. S. 1923, § 39–339).

Kentucky Statutes, Annotated (Baldwin's, 1936), Chapter 102

Sec. 3922. *Paupers not to be brought from other states.*—No persons shall bring into this state from another state, or from any county in this state into another, any poor person, except his father, mother, or child, who is likely to become chargeable to the county into which such person may be brought (G. S., ch. 86, sec. 1).

Sec. 3923. *Persons bringing paupers here; how dealt with.*—Any person offending herein, shall, on the warrant of a justice or the county judge of the county aggrieved, be arrested and recognized with surety to appear before the county court to answer for the offense; and on his failure to give surety, he shall be committed to jail until court, or until bail is given (G. S., ch. 86, sec. 2).

Sec. 3924. *Bond may be required of offender; penalty.*—The county court may require such person to give an obligation, with surety, that the poor person so introduced shall not become chargeable to the county; and upon failure to execute such obligation, he shall be fined not exceeding one hundred dollars ($100.00) (G. S., ch. 86, sec. 3).

Maine Revised Statutes (1930), Chapter 33

Sec. 36. *Foreign paupers may be removed; exception of families of volunteers (R. S., c. 29, sec. 40).*—On complaint of overseers, that a pauper chargeable to their town has no settlement in this state, any judge of a municipal or police court, or trial justice, may, by his warrant directed to a person named therein, cause such pauper to be conveyed, at the expense of such town, beyond the limits of the state to the place where he belongs; but this section does not apply to the families of volunteers enlisted in the state who may have been mustered into the service of the United States.

Sec. 43. *Penalty for bringing paupers into a town (R. S., c. 29, sec. 47; 1929, c. 90).*—Whoever brings into and leaves in a town any poor, indigent, or insane person, having no visible means of support, and having no settlement in such town, or hires or procures such person to be so brought, or aids or abets in so doing, knowing such person to be poor, indigent, or insane as aforesaid, with intent to charge such town in this state with the support of such person, shall be punished by a fine of not more than three hundred dollars, or by imprisonment for not more than eleven months. And shall be further liable to any town or to the state for such sums of money as are expended by such town or by the state for the support and maintenance of such person, which may be recovered in an action on the case.

MASSACHUSETTS LAWS, ANNOTATED (1933), VOLUME IV, CHAPTER 117

SEC. 28. *Penalty for leaving poor persons where not settled.*—Whoever brings into and leaves a poor and indigent person in any town in the commonwealth, wherein such person is not lawfully settled, knowing him to be poor and indigent, and with intent to charge such town with his relief or support, shall forfeit not more than one hundred dollars to the use of such place (1788, 61, sec. 9; 1793, 59, sec. 13; R. S. 46, sec. 24; 1849, 66; G. S. 70, sec. 20; P. S. 84, sec. 31; R. L. 81, sec. 35).

General Consideration: The section applies to public officers as well as private persons. They are included in the word "whoever." *Palmer* v. *Wakefield,* 102 Mass. 214. It seems that an action for the penalty under this section should be brought in the name of the commonwealth. *Sturbridge* v. *Winslow,* 38 Mass. (21 Pick.) 83.

Evidence: On the trial of an action under this section, evidence that the poor person was receiving aid as such from the commonwealth at the time of his removal into the plaintiff town is not competent to prove that he did not have a settlement in that town. *Franklin* v. *Fuller,* 105 Mass. 336.

Defenses: Where defendant acted under orders from proper authorities of one town, it was held that it was not necessary that the order should recite acts and proceedings warranting its issuance, and the defendant, leaving the indigent person in the town pursuant to the order, was not bound to go behind the order and show that his superiors had complied with the law. *Sturbridge* v. *Winslow,* 38 Mass. (21 Pick.) 83. The intention of an officer being found to be innocent, deviation from his orders did not subject him to the penalty of this section. *Deerfield* v. *Delano,* 18 Mass. (1 Pick.) 465, cited in note, 43 L. R. A. (N. S.) 3.

State in *Greenfield* v. *Cushman,* 16 Mass. (16 Tyng) 393.

SEC. 23. *Person chargeable to city or town may be removed out of state, when.*—A person who has actually become chargeable to a town where he has a settlement and who subsequently acquires a settlement in a place out of the commonwealth may be removed thereto by the board of public welfare of such town by a written order directed to any person therein designated (1868, 328, sec. 2; P. S. 84, sec. 26; R. L. 81, sec. 30; 1928, 155, sec. 25).

SEC. 25. *Person aided may be removed to place of settlement.*—The board of public welfare of a town to which a person has actually become chargeable may give written notice thereof to and request his removal by one or more of the members of the board of public welfare of the town where his settlement is supposed to be, who may, by a written order directed to a person designated therein, cause such removal to be made (1793, 59, secs. 9, 10; R. S. 46, sec. 19; G. S. 70, sec. 17, P. S. 84, sec. 28; R. L. 81, sec. 32; 1931, 394, sec. 120).

MICHIGAN STATUTES ANNOTATED (1937)

SEC. 16.154. *Poor persons, bringing into county; penalty (sec. 13).*—Any person who shall send, carry, transport, remove, or bring, or who shall cause or procure to be sent, carried, transported, removed, or brought, any poor or indigent person, from any township, village, city, or county, into any other township, village, city, or county, or from any other state or country, into any county in this state, without legal authority, and there leave such poor person, or who shall entice such poor person so to remove, with the intent to make such county to which the removal shall be made chargeable with the support of such poor person, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned in the county jail not exceeding three (3) months, or fined not exceeding one hundred (100) dollars, or both such fine and imprisonment, in the discretion of the court (C. L. '29, sec. 8241).

SEC. 16.159. *Poor person, bringing from without state; forfeiture (sec. 18).*—Any person who shall bring or remove, or cause to be brought or removed, any poor or indigent person, from any place without this state, into any county within it. with intent to make such county chargeable with the support of such poor persons, shall forfeit and pay fifty (50) dollars, to be recovered before any justice of the peace of the county into which such poor person shall be brought, or in which the offender may be; and shall also be obliged to convey such poor person out of the state, or support him at his own expense (C. L. '29, sec. 8246).

SEC. 16.171.—*Same; removal to place of settlement, charging such place with expense of support if not removed (sec. 30).*—The supervisor of the township or director of the poor of the city in which it may be alleged any poor person has gained a settlement, may at any time after receiving such notice requiring him to provide for such poor person, take and receive such poor person to his township or city, and there support him. If he omit to do so, or shall fail to obtain the decision of the county superintendents, so as to exonerate him from the maintenance of such poor person, the charge of giving such notice, and the expenses of maintaining such poor person, after being allowed by the county superintendents, shall be laid before the board of supervisors at their annual meetings, from year to year, as long as such expenses shall be incurred; and the supervisor shall annually add the amount of the said charges to the tax to be laid upon the township or city to which the poor person belongs, together with such sum in addition thereto as will pay the township or city incurring such expenses the lawful interest thereon, from the time of expenditure to the time of payment, which sums shall be assessed, levied, and collected in the same manner as the other contingent expenses of such township or city. The said moneys when collected, shall be paid to the county treasurer, and be by him credited to the account of the township or city which incurred the said expense (C. L. '29, sec. 8258).

Sec. 16.191. *Removal of poor person to municipality liable for support or care in county where found; duty of superintendents of county chargeable (sec. 5).*—The superintendents of the poor, or any of them, of the county sought to be charged with the care, relief, and support of poor persons by means of the notice required by this act, if they, or any of them, shall deem their county, or any township or city of their county, legally liable for the care, relief, and support of such poor person, shall have the right and are authorized to take into their custody and transport such poor person or persons from the county where such poor person or persons may be, to the county, township, or city to which such poor person or persons belong. No superintendent of the poor acting under the provisions of this act, in taking into custody and transporting any poor persons as herein provided, shall become liable in any manner to any action or prosecution for illegal arrest or false imprisonment. If the superintendents of the poor, or any of them, of the county sought to be charged, as aforesaid, shall deem their county, or any township or city thereof, legally liable for such care, relief, and support of such poor person, such superintendents or superintendent, if they or he do not deem it advisable to take into custody and transport such poor persons, as hereinbefore provided, may send a notice directing and authorizing the superintendents of the poor of the county from which the notice provided for in section three (3) of this chapter has been received, to continue such relief and support as the necessity may require (C. L. '29, sec. 8278).

Minnesota Statutes (Mason's, 1927), Chapter 15

Sec. 3163. *Bringing poor person into state.*—Whoever without legal authority shall send, carry, or remove, or cause to be sent, carried, or removed, any insane, idiotic, or poor person from without the state to any county therein, and there leave him, or cause him to be left, with intent to make such county, or any town, city, or village thereof, chargeable with his support or relief, or who with like intent shall induce any such person so to remove, shall forfeit fifty dollars, to be recovered by the treasurer of such county, town, city, or village, for the support of the poor therein, and shall, moreover, be guilty of a misdemeanor (1490) [3073].

Sec. 9922. *Punishment of misdemeanors when not fixed by statute.*—Whoever is convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than one hundred dollars (4763) (8482).

Sec. 3162. *Removal of poor person—Settlement.*—When a poor person is removed, as hereinafter provided, from one county, town, city, or village to another, and the authorities thereof deny that he is legally settled therein, they shall make temporary provision for his care. If such removal was from one county to another county, or to any town, city, or village of another, the authorities may present the case to the state board of control; if the removal was from one town, city, or village to another within the same county, they may present the case to the county board. The board shall determine the settlement of such person, and certify its findings, and thereupon he shall become a charge upon the county, town, city, or village in which such settlement is found to be, which shall also pay the cost of caring for such person pending the investigation, and of removing him to the place of his settlement, together with the expenses of such investigation, including the fees and mileage of witnesses, and, in the case of the state board, the expenses of its committees or agents. But such findings of the board shall be without prejudice in any litigation arising by reason thereof (1489) [3072].

SEC. 3173. *Settlement in another county.*—When application for support or relief is made by a person whose settlement is in another county, or in a town, city, or village of another county, the board applied to, or its chairman, shall warn him to depart from its county; and if he is unable or refuses to do so within a reasonable time, and is likely to become a public charge, the chairman may issue an order, under his hand and the seal of the board, to the sheriff or any constable of the county, requiring him to convey such person to the place of his settlement. If he be so sick, infirm, or otherwise disabled as to render it unsafe or inhuman to remove him, and is in immediate need of support or relief, provision therefor shall be made in the manner prescribed in [R. L.] secs. 1497–1499. All proper expenses incurred by such county in making such removal, or in furnishing such support or relief, shall be paid by it, and shall be a legal claim in its favor against the county, town, city, or village in which such person has a settlement (1500) [3083].

MISSISSIPPI CODE, ANNOTATED (1930)

SEC. 5715. *Vessels bringing pauper immigrants, children.*—If any person commanding a ship, vessel, steamboat, or other watercraft, shall import into this state, or bring to the shores or within the limits thereof, any infant, lunatic, maimed, aged or infirm person, or vagrant, who is likely to become chargeable on the county, on the requisition of the supervisor of the district, or the mayor of any city, town, or village, the captain, master, or commander of such ship, vessel, steamboat, or other watercraft shall enter into bond, with sufficient sureties, payable to the county, conditioned to indemnify such county against all charges that may be incurred in the support and care of such person; and any captain, master, or commander failing or refusing to give the bond required, shall forfeit and pay to the county the sum of two hundred dollars for each infant, lunatic, maimed, aged, or infirm person, or vagrant so brought into the state, to be recovered by action (6204; 3587; 3164; 640; 1989; Ch. 23 art. 19; Ch. 14 art. 2 (9)).

SEC. 5716. *Master of vessel landing alien passengers.*—When any ship, vessel, or steamboat shall arrive at any port or harbor with alien passengers on board, who are to be landed or left, and who may become a charge as paupers, the master or commanding officer of the vessel shall, before such passengers, or any of them, leave the ship, vessel or steamboat, deposit with the supervisor of the district where the passengers are to be landed or left, a list of their names, and shall forthwith enter into bond, with sufficient sureties, payable to the county, in a sufficient penalty, with condition to indemnify the county from all expenses which may arise from supporting or maintaining such aliens; and in default of such bond, the captain, master, or commander may be committed by any justice of the peace, or mayor of any city, town, or village, until the bond be executed; and, moreover, the captain, master, or commander shall be liable to be indicted, and, on conviction, shall be fined in the sum of one hundred dollars for each person landed in violation of this section; but the board of supervisors, on investigation of the matter, may dispense with the bond (6205; 3588; 3165; 641; 1990; Ch. 23 art. 20).

SEC. 5707. *Strolling paupers removed and, if sick, relieved.*—The members of the board of supervisors shall prevent the poor from strolling from one district to another, and in case any pauper shall leave the county in which he may have a settlement, and remove to another county, any member of the board of supervisors may make an order to remove the pauper back to the county from which he came, directed to any constable to execute. But if the pauper be sick or disabled so that he cannot be removed, he shall be provided for in the county in which he may be found until he can be removed; and the county in which he had a legal settlement shall pay all charges occasioned by the support of the pauper and for removal, or burial in case of death, which shall constitute a charge against the county, and may be recoverable by action before the proper court. And it shall be the duty of the board of supervisors of the county to which any pauper belongs, to receive him, on his removal, and provide for him as in other cases (6187; 3570; 3147; 633; 1984; Ch. 23 art. 11; Ch. 14 art. 2 (4)).

NEBRASKA COMPILED STATUTES (SUPP. 1939)

SEC. 68–116. *Pauper, bringing into county where legal settlement not established, penalty.*—If any person shall bring or leave any poor person or persons in any county in this state wherein such poor person has not established a legal settlement, knowing him or them to be poor persons, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county, before the county judge or any justice of the peace, in the proper county (R. S. p. 277; Ann. 9765; Comp. 4626; R. S. 1913, 5810; C. S. 1922, 5155; C. S. 1929, 68-116; 1933 p. 483).

NEVADA COMPILED LAWS (HILLYER, 1929)

SEC. 5147. *Penalty for transporting paupers* (*sec. 11*).—If any person shall bring and leave any pauper in any county in this state, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county in a civil action before any court having jurisdiction of the same.

SEC. 5150. *Bringing pauper into State misdemeanor—Penalty* (*sec. 3*).—Every person, firm, or corporation, or the officers, agents, servants, or employees of any person, firm, or corporation, bringing into or leaving within, or aiding in the bringing into or the leaving within, of any pauper or poor or indigent or incapacitated or incompetent person as hereinbefore mentioned, in any country in the State of Nevada, wherein such person is not lawfully settled or not lawfully residing as herein defined, knowing him to be such pauper, poor, indigent, or incapacitated or incompetent person, and for the purpose of imposing said person as a public charge on the county to which said person shall be taken as aforesaid shall be guilty of a misdemeanor and on conviction thereof shall be fined in a sum not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail not more than sixty days, or by both such fine and imprisonment.

NEVADA COMPILED LAWS (HILLYER, SUPP. 1938)

SEC. 5144. *Provisions precedent to granting relief* (*sec. 8*).—When application is made by any pauper to the board of county commissioners aforesaid, and it shall appear to the satisfaction of said board that the person so applying for relief has resided in said state and county agreeable to the provisions of the foregoing section of this act, said pauper shall be entitled to all of the relief provided by this act; but if, on the contrary, it shall appear to the satisfaction of said board that such pauper has not been a resident of said state and county agreeable to the provisions of the foregoing section, but that said pauper, previous to removing to the said county where said application was made, was a resident of some other county of this state, as required by the foregoing section, said board shall provide temporary relief for said pauper, and immediately notify the board of county commissioners of the county where said pauper last had a residence for six months, and said notice shall be in writing, duly attested by the clerk of the board of county commissioners, and deposited in the post office, addressed to the board of county commissioners of said county, and it shall be the duty of the board of county commissioners receiving said notice to cause said pauper to be immediately removed to their county, and pay a reasonable compensation for the temporary relief afforded, and if said board of commissioners neglect or refuse to remove said pauper, the county affording relief shall have a legal claim against said county for all relief necessarily furnished, and may recover the same in a suit at law (as amended, Stats. 1933, 9).

NEW HAMPSHIRE

For provisions of the New Hampshire law, see brief of amicus curiae, pp. 64-66, "Typical State Anti-migratory Law."

NEW JERSEY STATUTES, ANNOTATED (1940), TITLE 44, CHAPTER 1

SEC. 117. *Duties of overseer.*—The removal of poor persons to their place of settlement or to the place where they became poor before being found or becoming domiciled in the place from which they are to be removed shall, when the removal is to another place in the same county, and in all other cases where there is no superintendent or county adjuster to act as provided in this chapter, be accomplished by action of the overseer where the person is found or resides. (Source: L. 1924, c. 132, sec. 64, p. 283 [1924 Suppl. sec. 161-187].)

SEC. 118. *Duties of county adjuster.*—The county adjuster shall on the application of an overseer forthwith take the steps necessary to the removal of a poor person to another state, or to another county within this state, by negotiating with the proper authority in the other state or county through the commissionre for the reception of the poor person who may be properly removable to a place in that state or county, and shall perform that function for all overseers in the county, and all overseers in a county shall take the steps necessary to such removal by means of the aid and authority of the county adjuster. (Source: L. 1924, c. 132, sec. 65, p. 283 [1924 Suppl. 161–188], as am. by L. 1931, c. 392, sec. 17, p. 1243.)

SEC. 124. *Bringing poor person into municipality or county unlawfully; misdemeanor.*—A person who shall send, bring, remove, or entice to remove, or cause to be sent, brought, or enticed, a poor person into a municipality or county from any other municipality or county within this state without first having obtained the consent of the overseer of the municipality or the superintendent if there is no overseer appointed and qualified therein, or the county welfare board of the county, as the case may be, or from any other state into any municipality or county within this state without first having obtained the consent of the commissioner and furnished suitable bond, and there leave or attempt to leave the person without first having obtained that consent, in order that the support or maintenance of the poor person upon the municipality or county may be avoided, shall be guilty of a misdemeanor, and the poor person shall not gain a legal settlement thereby and shall be returned from whence he came in the manner provided by law. (Source: L. 1924, c. 132, sec. 70, p. 286 [1924 Suppl. sec. 161–193], as am. by L. 1931, c. 392, sec. 18, p. 1244.)

NEW JERSEY STATUTES, ANNOTATED (1940), TITLE 2, CHAPTER 103

SEC. 6. *Misdemeanors; punishment.*—Any person found guilty of any crime which by any statute is declared to be a misdemeanor, and for which no punishment is specifically provided, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment, with or without hard labor, as the court may direct, for a term not exceeding three years, or both. (Source: L. 1898, c. 235, sec. 218, p. 854 [C. S. p. 1812, sec. 218].)

NEW YORK CONSOLIDATED LAWS, ANNOTATED (MCKINNEY'S, 1930)

SEC. 151. *Penalty for unlawfully bringing a poor person into a public welfare district.*—No person shall, without legal authority, send or bring, or cause to be sent or brought, any poor person into a public welfare district with the purpose of making him a charge on such public welfare district, or for the purpose of avoiding the responsibility of support in the public welfare district from which he is brought or sent. Any person found guilty of such an act shall be guilty of a misdemeanor and liable to a fine of fifty dollars, recoverable in the name of the public welfare district.

This section relates to same subject matter as sec. 50 of the former Poor Law. That section was derived from Poor Law of 1896, sec. 50.

Unlawful removal of poor person. (See Penal Law, sec. 1650.)

Decisions under sec. 50 of former Poor Law—Former provision.—This section formerly required the element of intent to make the person removed a charge on the county to which he was removed and no liability was incurred when such intent was absent. *Cortland County* v. *Herkimer County* (1870), 44 N. Y. 22; *Foster* v. *Cronkhite* (1866), 35 N. Y. 139; *Thomas* v. *Ross* (1832), 8 Wend. 672.

Cited: This section was cited in *People* v. *Maynard* (1899), 160 N. Y. 453, 55 N. E. 9; *Matter of McCutcheon* (1898), 25 Misc. 650, 56 N. Y. S. 370; *Thomas* v. *Ross* (1832), 8 Wend. 672.

SEC. 152. *Penalty for bringing nonresident poor into the state.*—Any person who knowingly brings, or causes to be brought, a destitute person from out of the state into this state and leaves him or attempts to leave him for the purpose of making him a public charge, shall be guilty of a misdemeanor punishable by a fine of one hundred dollars, and shall be obligated to convey such person out of the state or to support him at his own expense. The commissioner of the public welfare district to which such destitute person is brought may bring a suit in a court of competent jurisdiction to enforce this obligation. The court shall require satisfactory security from such person that he will convey the destitute person out of the state within the time fixed by the court or will indemnify the public welfare district for all charges and expenses incurred for the support or transportation of such destitute person. If such person refuses to give security when so required, the court may commit him to jail for not exceeding three months.

This section covers same subject matter as sec. 55 of the former Poor Law. That section was derived from Poor Law of 1896, sec. 55.

Decisions under sec. 55 of former Poor Law—Defenses: In an action under this section, it is no defense that the pauper formerly had a legal settlement in the place to which he was brought, and had not subsequently gained one elsewhere, nor that the persons making the removal were acting under the authority of another state (*Winfield* v. *Mapes* (1847), 4 Denio 571).

Liability of carrier: Carriers of passengers are within the letter but not within the spirit of law and cannot be charged, unless in bringing poor or indigent persons into a city or town and leaving them there they act fraudulently (*Thomas* v. *Ross* (1832), 8 Wend. 672).

Form of remedy: Overseers of the poor who have expended money for the maintenance of the pauper cannot maintain an action against the person who brought into the town the pauper having no legal settlement in the state, for the amount so expended. Their remedy is under the statute to recover the penalty given in such case (*Crouse* v. *Mabbit* (1814), 11 Johns).

SEC. 59. *Removal of a person to the public-welfare district of his settlement.*—When a person cared for in the public-welfare district where he is found shall have a settlement in some other public-welfare district within the state, the public-welfare official responsible for his support may send for and remove such person and care for him in his own public-welfare district, or elsewhere, when it shall seem for the best interests of such person that he be so removed. If such person shall refuse to be so removed, the commissioner of the public-welfare district responsible for his support may apply to the county judge of his county for the issuance of an order to the sheriff of the county, or to some other person or persons, for the removal of the person to the public-welfare district legally responsible for his support. If the person is not so removed, the commissioner shall continue to be responsible for his support in the public-welfare district where he is found.

SEC. 73. *Removal of nonresident and alien poor to other states and countries.*—When any person who is an inmate of any public home or is otherwise cared for at the expense of the state or of any public-welfare district belongs to or has friends willing to support him or to aid in supporting him in any other state or country, the superintendent of state and alien poor may cause his removal to such state or country, provided in the judgment of the superintendent, the interest of the state and the welfare of such person will be thereby promoted. The expense of such removal shall be paid from the state treasury on the warrant of the comptroller pursuant to a verified account submitted by the superintendent of state and alien poor or other person legally incurring the expenditure.

This section relates to similar subject matter as sec. 99 of the former Poor Law. That section was derived from Poor Law of 1896, sec. 99.

RHODE ISLAND GENERAL LAWS, ANNOTATED (1938), CHAPTER 70

SECTION 1. If any person shall bring into and leave any poor and indigent person in any town wherein such pauper is not lawfully settled, knowing him to be poor and indigent, unless by an order of removal made by a town council in the State, he shall forfeit $100.00 for every such offense, to be sued for and recovered by the town treasurer to the use of such town, or shall be fined not exceeding $20.00 (G. L., 1923, Chap. 106, Sec. 1).

SEC. 2. Every railroad company or owner of a steamboat, whose officers or servants shall bring any poor and indigent person into the State and shall leave such person therein, shall be liable for the relief and support of such person for and during 12 months next after his being brought into the state, to be recovered in an action of the case in the name of director of public welfare, to the use of the state; and said company or owners shall, upon the written order of said director, return such person to the place from which such company or owner brought him. Every such company or owner willfully refusing or neglecting to comply with such order shall forfeit $500.00, to be recovered by said director to the use of the state (G. L., 1923, Chap. 106, Sec. 9.).

SEC. 5. Upon such complaint the town council may inquire, either by the oath of such poor person, or otherwise, in what town he was last legally settled, and, upon the best information they can obtain, may adjudge and determine to what town he lawfully belongs within the state, or in which he was last legally settled; which being done, the town council shall make an order under their seal, to be signed by their clerk, for the removal of such person to such town.

SEC. 6. Such order shall be directed to the town sergeant or one of the constables of such town, who shall proceed forthwith to remove such person and such of his family, if any he have, as by law ought to be removed with him, to the town or place to which he is adjudged by such order to belong and there deliver him to one of the directors of public welfare of such town, and leave an attested copy of the order with such director.

Conclusiveness of order.—Order for removal, when unappealed from, is conclusive. *Tiverton* v. *Fall River*, 7 R. I. 182.

Right of removal limited.—Since the operation of statute is necessarily confined to this state, right of removal under statute is properly limited to removal to town in this state. *Exeter* v. *Richmond*, 6 R. I. 149.

SEC. 14. If any person who has been or may hereafter be removed by an order of removal from any town in the state to any other town therein, shall voluntarily return to the town from which he was so removed, without leave first obtained of the town council of such town for so doing, and the town council of such town shall subsequently cause such person to be again removed to the same town, the town to which such person shall have been so subsequently removed shall pay to the town so removing such pauper the cost of every such subsequent removal, not exceeding 20 cents per mile, to be recovered in an action of the case in the name of the town treasurer of the town from which such person shall have been removed.

SEC. 19. If any person in any town shall willfully suffer or permit any person who has been removed or ordered to depart as hereinbefore provided from such town by the town council thereof, to occupy or reside in his house or possessions after notice of such removal or order of departure given, by the town sergeant or any one of the constables of the town, by order of the town council, such person shall forfeit $50.00, to be sued for and recovered by the town treasurer to the use of the town.

SOUTH DAKOTA CODE (1939), TITLE 50

SEC. 50.0106. *Sending poor persons out of county.*—It shall be unlawful for any person, either directly or indirectly, to send, or be instrumental in sending or causing to be sent, out of the county where such person properly belongs, any person who is or is likely to become an object of public charity, into any other county of this state, except in the manner provided for in this title. (Source: sec. 10063, Rev. Code 1919, revised in form.)

SEC. 50.9901. *Sending poor person from county otherwise than as provided by law.*—Any person who violates the provisions of section 50.0106, shall be guilty of a misdemeanor and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. (Source: Sec. 10064, Rev. Code 1919, revised in form.)

SEC. 50.0501. *Justice of municipal court to issue warrant.*—Upon complaint of any county commissioner, any justice of the peace or municipal court may issue his or its warrant, directed to and to be executed by any constable or by any other person therein designated, to cause any poor person found in the county, likely to become a public charge and having no legal settlement therein, to be sent, at the expense of the county, to the place where such person belongs, if the same can be conveniently done; but if he or she cannot be removed, such person shall be relieved by such commissioners whenever such relief is needed. (Source: Sec. 10048, Rev. Code, 1919, revised to make specific provision for issuance of warrant by municipal court.)

SEC. 50.0209. *Civil penalty for bringing pauper into county.*—Every person who shall bring into and leave any person in any county wherein such person is not lawfully settled, knowing such person to be a pauper, shall forfeit and pay the sum of one hundred dollars for every such offense, to be recovered by action in the name of the county. No property shall be exempt from seizure and sale in such case; and it shall be the duty of the board of county commissioners to institute actions for all violations of this section; and all such penalties, when collected, shall be paid into the county treasury for the use of the county. (Source: Sec. 10065, Rev. Code, 1919.)

VERMONT PUBLIC LAWS (1933), TITLE 15, CHAPTER 160

SEC. 3948. *Duties of overseer.*—The overseer of the poor of a town chargeable with the support of paupers who are residing in another town may remove such paupers to the town chargeable with their support (G. L. sec. 4243).

SEC. 3949. *From without state; jurisdiction.*—A person who comes into a town in the state with intent to become chargeable as a pauper to such town, unless such town is liable for his support, shall be imprisoned not more than six months or fined not more than twenty dollars. Justices' and municipal courts shall have jurisdiction of offenses under this section, but a justice, judge or juror shall not act in the trial of a prosecution relating to the town in which he resides (G. L. sec. 4245).

SEC. 3950. *Charging town with pauper.*—A person who brings a poor and indigent person from any town in the state to another town in the state, or aids therein, with intent to charge such town with his support, shall forfeit to such town a sum not exceeding five hundred dollars; and, if such town is not liable for the support of such poor and indigent person, the person making such removal, or aiding therein, also shall be liable, from time to time, to pay such town such damages as accrue for the support of such poor person, which, as well as the penalty, may be recovered in an action of tort, on this statute, in the name of the town (1919, No. 107, G. L. sec. 4246, 11 Vt. 494, 13 Vt. 228, 16 Vt. 644, 33 Vt. 205, 40 Vt. 245, 44 Vt. 245, 44 Vt. 662, 61 Vt. 139, 64 Vt. 415).

SEC. 3951. *Same; removal.*—The selectmen of a town, if the town is not liable for the support of such poor and indigent person, without forfeiture or penalty, within one year after a poor and indigent person comes to the town, provided such person has there become a town charge, may return such person to the town from which he last came (1919, No. 107, G. L. sec. 4246).

SEC. 3953. *Bringing pauper from without state.*—A person who brings from without the state and leaves in a town in the state or so brings with intent to leave, a poor and indigent person having no visible means of support, knowing such person to be poor and indigent as aforesaid, or hires or procures such person to be so brought, or aids or assists therein, with intent to charge such town with the support of such person, shall be imprisoned not more than one year or fined not more than five hundred dollars nor less than one hundred dollars, and shall be further liable to the town for such sums of money as are expended by it for the support and maintenance of such person, which may be recovered in an action of tort, on this statute (G. L. sec. 4247, 50 Vt. 170, 51 Vt. 160, 102 Vt. 180).

WASHINGTON REVISED STATUTES, ANNOTATED (REMINGTON'S 1933)

SEC. 9989. *Proceedings to expel pauper.*—When application is made by any pauper to the board of county commissioners as aforesaid, if it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section [9987] he shall be entitled to all the relief provided by this title; but if, on the contrary, it shall appear to the satisfaction of said board that such pauper has not been a resident of said county agreeably to the provisions of section 9987, they shall proceed to remove from their county, at the expense of said county, such pauper to the county where such pauper may have his residence, or may, if they think best, issue a notice directed to some constable of the county, which notice said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county; and after so serving said notice by reading the same to said pauper, said constable shall, within five days thereafter, return the same to the said clerk of the board of county commissioners issuing the same, noting the time and manner of service (L. '54, p. 397, sec. 8; Cd. '81, sec. 2704; 1 H. C., sec 3095).

SEC. 9992. *Importing pauper.*—If any person knowingly bring within this state any pauper or poor person with the intent of making him a charge on any county or counties therein, he shall be punished by a fine not exceeding five hundred dollars, and stand charged with his support (Cd. '81, sec. 932; 2 H. P. C., sec. 162).

WEST VIRGINIA CODE, ANNOTATED (1937)

SEC. 626 (149) (4). *Bringing indigent persons into State.*—If an indigent person, not having a legal residence in any county of this State, is brought into and left in the State with intent that he should become a public charge, the person who brought or caused to be brought, or counseled or aided in bringing the indigent person into the State, with such intent, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars, or imprisoned in the county jail not more than sixty days, or both (1936, 1st Ex. Sess., c. 1).

WISCONSIN STATUTES (BROSSARD, 1939), TITLE VII

SEC. 49.06. *Bringing paupers into the state.*—Any person who shall bring or remove or cause to be brought or removed any poor person from any place without this state into any municipality within it, with intent to make such municipality chargeable with his support, shall forfeit fifty dollars; and the justice or court before whom such person shall be proceeded against for a violation of the provisions of this section shall, by its judgment, require of such person satisfactory surety that he will, within a reasonable time to be fixed, transport such poor person out of the state or indemnify such municipality for all charges and expenses which have been or may be incurred in his support; and in case of neglect or refusal so to do commit such person to the county jail until he shall comply with said judgment, but for a term not exceeding three months.

(NOTE.—No person has authority to bring feeble-minded child into this state for purpose of placing it in state institution. 22 Atty. Gen. 111.)

SEC. 49.03 (9). When a poor person is given relief in some other county or municipality than the one in which he has a legal settlement, either county or municipality involved may apply to the county judge or municipal judge of its county or municipality for an order directing such poor person to return to the county or municipality of his legal settlement, all expenses of removal to be paid by the county or municipality in which such poor person has a legal residence or settlement. Upon the filing of such petition the county or municipal judge shall issue an order directing the poor person to return to such municipality, unless it shall clearly appear that such removal would be against his best interests. Upon issuance of any such order no further public relief shall be given to the person to whom it is directed until he shall comply therewith (1931 c. 92; 1935 c. 453; 1937 c. 338, 344, 400; 1939 c. 13, 242).

SEC. 49.04. *County relief of transient and local paupers.*—(1) The county board of each county shall have the care of all poor persons in said county who have no legal settlement in the town, city, or village where they may be, except as provided in section 49.03, and shall see that they are properly relieved and taken care of at the expense of the county.

(2) The board may make regulations, not inconsistent with law, in relation to the support and maintenance of such persons and may also contract with any town, village, or city in said county to keep and maintain at the place where the poor supported by the county are kept, such poor persons as may be a charge upon such municipality, at a stipulated price, the amount of which shall be levied and collected in such municipality in the manner county taxes are levied and collected therein.

(3) The board may also, by resolution adopted at its annual or special meeting, at the expense of the county, relieve and take care of all permanent poor persons who may be a charge upon any municipality in such county and cause them to be committed to the county home of such county, pursuant to section 49.07.

WYOMING LAWS (1937)

SEC. 34. *When recipient moves from county to county.*—Any recipient who moves to another county in this State shall be entitled, with the approval of the State Department and both County Departments concerned, to receive assistance in the county to which he has moved, but the county from which the recipient moves shall continue to pay the assistance for a period of one year after removal, provided that the recipient remains eligible as provided under the terms of this Act. During this period of one year the County Department of the county to which the recipient has moved shall make investigations of the county from which he moved when such investigations and reports are requested by the said County Department of the county of original residence. At the end of the one-year period the recipient shall, if eligible, be entitled to receive assistance from the county to which he has moved and the County Department of the county of original residence shall transfer certified copies of all necessary records relating to the recipient to the County Department of the county to which he has moved. The provisions of this Section shall not be construed to mean that an eligible recipient of Old Age Assistance, Aid to Dependent Children, or Aid to the Blind will in any instance have his assistance terminated because of the failure of Counties to agree upon his place of residence. In case of such disagreement the State Department is hereby authorized to decide from which County he shall receive his assistance.

SEC. 37. *Eligibility for general relief.*—Any indigent person may receive general relief from the County Department of the County in which he is living, provided that he shall have resided in the State of Wyoming and in the county in which he applies, for a period of one year at the time of making application and has not been absent from the State or from the county in which he applies for a period of more than one year immediately preceding the date of application; provided, that absence in the service of the State of Wyoming or the United States shall not be deemed to interrupt residence in the State or county if a domicile be not acquired outside the State. No person may apply toward residence qualifications any period of time during which he is receiving public assistance, except as provided in this Act.

WYOMING REVISED STATUTES, ANNOTATED (COURTRIGHT, 1931), CHAPTER 29, ARTICLE 12

SEC. 29-1205. *Each county to care for its paupers.*—If any person shall become chargeable in any county in which he did not reside at the commencement of the ninety days aforesaid, he shall be cared for by the county commissioners of the county where he may be found. And it shall be the duty of the county clerk of said county to send notice by mail to the county clerk of the county in which such person has his permanent residence, that said person has become chargeable as a pauper, and requesting the authorities of said last named county, to remove said pauper forthwith, and to pay the expenses incurred by reason of the care aforesaid. If any such pauper, by reason of sickness or disease, or through neglect of the proper authorities aforesaid to remove him, or if, through any cause, he cannot be removed, then the county taking charge of such pauper may, by civil action, sue for and recover from the county to which such pauper belongs, the sum expended for and on behalf of such pauper, and in taking care of same (C. L. '76, c. 93, Sec. 5; R. S. '87, Sec. 1957; R. S. '99, Sec. 1262; C. S. '10, Sec. 1345; C. S. '20, Sec. 1594).

Cited in *Board of Com'rs of Sweetwater County* v. *Board of Com'rs of Carbon County* (6 Wyo. 254, 44 P. 66, annotated under Sec. 29-1201).

SEC. 29-1206. *Misdemeanor to bring pauper into county.*—If any person shall bring and leave, or cause to be brought and left, any pauper or paupers in any county wherein such pauper or paupers do not lawfully reside, or shall bring and leave, or cause to be brought and left, in any county, any persons who from any disability will become chargeable upon said county, with intent to make such pauper or paupers a county charge, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, nor less than twenty-five dollars (C. L. '76, c. 93, Sec. 6; R. S. '87, Sec. 1958; R. S. '99, Sec. 1263; C. S. '10, Sec. 1346; C. S. '20, Sec. 1595).

WYOMING LAWS (1937)

SEC. 38. *Care of nonresidents.*—Whenever any person not qualifying as a resident of the State, as provided in this Act, shall require general relief in any county of this State, the County Department of such county shall provide whatever general relief it may deem necessary in accordance with the rules and regulations of the State Department; provided, however, that the County Department shall promptly communicate with the proper officials of the county and State in which said person has residence or domicile requesting authority to return said person to his place of residence. Upon receipt of such authority the County Department shall provide for the transportation and expenses en route of such transient person to his place of residence; when such transient or nonresident person be possessed of property other than the personal effects necessary for decency and health, he shall be required to dispose of such property and the proceeds therefrom shall be applied toward the purchase of the necessary transportation and expenses.

Whenever any person shall apply to a County Department for general relief and is a resident, as provided in this Act, of the State of Wyoming but not of the county in which he applies, the County Department of the county in which he applies shall provide such general relief as it shall deem necessary in accordance with the rules and regulations of the State Department and shall immediately notify the County Department of the county in which said person has residence as provided in this Act, and such County Department shall promptly authorize the person's return at the expense of the County Department of the county in which the person has applied.

SEC. 49. Article 1, Chapter 84, Wyoming Revised Statutes, 1931; Article 12, Chapter 29, Wyoming Revised Statutes, 1931; Chapter 64, Session Laws of Wyoming, 1935; Chapter 101, Session Laws of Wyoming, 1935; Chapter 129, Session Laws of Wyoming, 1935; and all other laws and provisions of laws in conflict with this Act are hereby repealed.

Exhibit No. 13.

ORAL STATEMENT OF SAMUEL SLAFF, ATTORNEY FOR APPELLANT, BEFORE THE SUPREME COURT OF THE UNITED STATES

Mr. SAMUEL SLAFF. May it please your Honors, this matter has already been heard by almost all the members of the Court last spring and I shall at this time try to confine myself to some of the highlights of the appellant's position and some of the principal matters raised in the brief of the State's Attorney General without attempting to reivew in specific detail all the original facts of the matter.

The appellant has been found guilty of violating section 2615 of the Welfare and Institutions Code of California. A 6-month jail sentence was suspended. The statute, the constitutionality of which we challenge, reads as follows:

"Every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor."

The facts were stipulated on the appeal below. They are the following:

"The appellant, Fred F. Edwards, a citizen of the United States and a resident of the State of California, left Marysville, California, on December 21, 1939, for Spur, Texas. The object of his trip was to bring his wife's brother, Frank Duncan, a citizen of the United States and resident of Texas, back to Marysville. Appellant arrived at Spur, Texas, on December 24, 1939, and learned that Duncan then had no job and had last been employed by the W. P. A. Appellant at that time learned that Duncan was an indigent person and at all times mentioned herein, appellant knew Duncan to be indigent. It was agreed between Duncan and appellant that appellant would drive Duncan from Spur, Texas, to Marysville, California, in appellant's car. Appellant and Duncan left Spur, Texas, on January 1, 1940, entered California from Yuma, Arizona, on January 3, 1940, and arrived in Marysville on January 5, 1940. At the time Duncan arrived in Marysville he was without funds and lived at appellant's home until he was given assistance by the Farm Security Administration about 10 days after his arrival in Marysville. Duncan had no employment after his arrival in California, until after he was given assistance by the Farm Security Administration. Duncan had about $20 when he left Spur, Texas; this money was all spent before his arrival at Marysville."

The appellant submits that California may not criminally penalize him for bringing into California an employable American citizen, willing and able to work. We consider that the statute under which the appellant was convicted violates both the commerce clause and the Fourteenth amendment. We maintain that the economic status of the individual, ready and able to work, cannot be used to impede his free movement in interstate commerce. May California place those who are poor and needy in the category of outlaws of commerce and bar them from interstate transportation and movement? That is the problem presented by this statute.

Interstate movement and migration of people in this land have not only developed the Nation but have been a fusing force in welding it together. That this movement is interstate commerce is conceded by the parties in this litigation. It is a movement of tremendous proportions. Millions of farm and other workers cross State lines annually in the course of, or the hunt for employment. Whatever the cause—whether American migration, at one time be a movement of despair and at another, one of hope—it is essentially a national manifestation of economic pressures and economic pulls. Want, starvation, the need to find employment—these have been the pushes. The attraction of areas of greater economic opportunity, the higher wages of the defense program—these are typical pulls. But in any event, it is the impoverished, the indigent, who move and their movement today is greater than ever. And in dealing with the impact of the commerce clause upon the statute here in question we submit that this migration from State to State is not a matter which is merely local in its nature or sphere of operation. And far from being undesirable, were it to be stopped or seriously curtailed, the entire economic structure of the country would be adversely affected to a marked and serious degree.

"There are much larger issues involved," and I am quoting now the view of the present Governor of California, "in the problem of interstate migration than those which have to do with the administration of welfare programs as such." The American migrant is neither a vagrant nor a pauper. He is a casualty, a casualty of economic change, thrown out of gainful employment and self-supporting, occupations as a result of profound dislocations in American agriculture and industry."

CHIEF JUSTICE STONE. Are you arguing that under no circumstances should the State prohibit the introduction of migrants?

Mr. SLAFF. I am maintaining, sir—"under no circumstances" is such a broad term that I am not quite sure what you mean by it.

The CHIEF JUSTICE. Are you arguing against the statute on its face?

Mr. SLAFF. I am arguing both propositions. I maintain that in its application in interstate commerce, this statute, because of the national nature and the national scope of the problem, and the effect on the flow of commerce across State lines when it is enforced, infringes the national interest and violates the commerce clause.

The CHIEF JUSTICE. My question is connected now with the first proposition. Is it against the statute on its face? I ask you whether the State under no circumstances can prohibit the introduction of indigent persons.

Mr. SLAFF. That is correct. That is my proposition. The American migrant——

The CHIEF JUSTICE. That is to say, are there no conceivable circumstances under which the State could prohibit the importation of people for the definite purpose and with the definite result of placing them on the charity rolls of the State and make——

Mr. SLAFF. I don't have to defend such a proposition.

The CHIEF JUSTICE. You do if you attack the statute on its face.

Mr. SLAFF. I do not sir, because there is nothing in this instant case and in the statute here that takes in the problem of charging the State with the support of the particular individuals brought in in this case. That never occurred in this case. And so while, if Your Honor wishes, I can defend that other position and will if you so direct. I don't think that it is involved.

The CHIEF JUSTICE. Then we won't argue it.

Mr. SLAFF. We have found out that several hundred thousand migrants entered the State of California in family units by automobile. Quite obviously, a statute which is aimed at the driver in circumstances like these is aimed at the other members of the family as well, or the other members of the group. As a consequence this statute in its practical application and in its effect has resulted in deporting indigent migrants from within California to their place of origin.

Mr. JUSTICE JACKSON. That might retard the flood. That is what it is designed to do, but is not the question here whether a State may say to its own people that they must not assist this influx, rather than stop the influx itself?

Mr. SLAFF. You limit it, Your Honor, when you say the State may say to its own people. This statute is directed to anyone. But waiving that consideration, I will take up under my discussion of the "due process clause" the question of whether there is any distinction between saying to an individual, "You may not bring in so-and-so," and "So-and-so cannot come into the State." We maintain that if constitutional rights exist in an indigent person, they would be protected by the fourteenth amendment. When one aids an individual person to come into California, no greater problem is presented to California than if the indigent person came in himself. In this case the appellant aided in this coming in.

Mr. JUSTICE JACKSON. You have a Federal policy which may be somewhat similar to this. Immigrants are permitted to come in but may not come if brought by contractors.

Mr. SLAFF. The Federal Government has control of that because the Federal Government has international sovereignty in the admission of people into this country. But States are restricted from exercising a similar right by the commerce clause.

Mr. JUSTICE BLACK. Does the statute apply to a common carrier?

Mr. SLAFF. I should say so, in its terms, Sir. Any person or corporation ——

Mr. JUSTICE BLACK. What would the standard of guilt be? What would they have to do?

Mr. SLAFF. Knowledge of the condition of indigency.

Mr. JUSTICE BLACK. Even though the ——

Mr. SLAFF. There hasn't been any prosecution of a carrier. There was a quasi-analogous situation in the city of Bangor, Maine, *City of Bangor* v. *Smith* (83 Me. 422). A Maine statute directed that a carrier bringing a person into the State who became destitute within a specified period of time would be required to take the person out of the State. In that particular situation they brought in some laborers to Bangor, Maine, and after they became destitute, out of work, the city requested the road to take them back. The road refused to take them back and the Court held that the statute was unconstitutional.

Mr. Justice Black. But we are not concerned with a carrier in this case, and different rules might apply. What are the differences between the charges here and those against the railroad?

Mr. Slaff. The party involved here was not a common carrier. It was the aiding of a relative in this specific case. The carriage was not for hire. That is all that appears from the record. There is no question but that the meaning of the statute is intended to cover any common carrier where the carrier has knowledge of the indigency of the person involved.

Addressing myself again to the commerce clause—over 2,000,000 people have recently migrated over State lines to defense centers. They fall into the 2 major clasess of migrants—migratory casual workers and the transient unemployed. The former are the major labor prop of seasonal or intermittent industry. The transient unemployed make up the bulk of American migrants. They are families seeking a permanent settlement. They number millions of persons annually on the move. Despite the unsupported and undocumented charge in appellee's first brief—the Yuba County brief—the facts simply do not bear out the charge that a search for high relief payments has actuated this large population movement. In fact, according to the report of the Tolan committee, a dislike of accepting public aid has frequently been a factor in inducing migration. There is a distortion of the entire problem when it is pictured in terms of swarms of people migrating to seek public charity. There appears to be a studied attempt in appellee's brief—the Yuba County brief—to forego the use of the term "indigent" and to inject the term "pauper" as synonymous with it. And the brief of the Attorney General, although not quite so obviously, does the same thing.

We submit that that is clearly improper and factually misleading. We find the meaning of the term "indigent," given it by the conviction in the instant case, to be that of an employable American citizen with some small means, although uncomfortably close to his last dollar. The term "indigent" includes employables and the State of California concedes this. It does not exclude the possession of some property and it takes in that portion of the laboring population which is self-supporting only when it is employed. Now the receipt of public relief may be an occasional incident, but it is not a requisite of the status of "indigent." The term is not synonymous with "pauper," which may be defined as one so destitute as to be dependent upon public charity and whose infirmity is more than economic, one who is unable or unwilling to work and whose disability is likely to be more or less permanent.

May I at this time, without anticipating the Attorney General's argument, point out some rather striking inconsistencies between this record and other cases, and the position expressed in the Attorney General's brief. Although the Attorney General considers the term "indigent" and the term "pauper" to be practically interchangeable, the appellate court in the instant case found an employable citizen with some small means, who had worked both prior and subsequent to this prosecution, to be an "indigent." The record, it seems to me, of the enforcement of this statute does not bear out the Attorney General's definition nor his construction of the statute. The judicial history of its enforcement is at wide variance with the concessions that the Attorney General would make in order to save some slight fragment of constitutionality for the statute. I refer, Your Honors, to the statement at page 27 of the Attorney General's brief that a person, although indigent himself, could not be guilty of the offense of bringing other indigent persons into the State if they were persons to whom he was under a legal obligation to support.

No such exception appears in the statute and no authority is given by the Attorney General for such a construction. I refer, Your Honors, to the following cases cited at pages 64 to 86 of the supplement to the brief of the State of California: In the *Ramos case* the indigent persons were the children and stepchildren of the defendant; in the *Emsminger and Jones case*, some of the indigents were children of the defendant Emsminger, the divorced husband of Mrs. Atkins; in the *Rankin and Morris case*, Mrs. Morris was charged with the crime of bringing her own children into the State, and although the record of the matter in the supplemental brief of the Attorney General makes no mention of it, Mrs. Morris too, was employable and happened to work on the judge's cotton farm, according to a letter which I have received on this matter. In the *Vaughn and Henson case*, the indigents were Mrs. Vaughn and her two children and the children of Mrs. Henson, one of the defendants. In the *Ochoa case*, the indigents were the same as in the *Ramos case.* Ochoa was the son-in-law of Ramos, the father of the children. But even if the Attorney General's construction, unwarranted as it is by the language of the statute itself and the construction given it in its actual administration, even if that construction were to be accepted that would have no bearing on the instant case or on the statute as a whole. The fact that a particular class might be excepted does not render the statute constitutional as to those classes to which it concededly applies, such as the appellant here.

I call the Court's attention, further, to the additional statement on page 27 of the Attorney General's brief. I quote, "The statute does not purport to exclude indigent persons from the State." Here, and it is my recollection that this was Mr. Justice Holmes' phrase, "The logic of words must face the logic of realities." In the *Vaughan and Henson case* jail sentences were suspended on condition that the indigent defendants leave the State for 2 years; in the *Jones and Emsinger case,* the Jones defendants were legal residents of California and they were banished to Oklahoma for 2 years for the crime of bringing their sister and her children into California after she had been critically injured in an automobile accident in Texas—and she and her children were ordered returned to Oklahoma. In the *Duncan case,* sentence was suspended on condition that the other Duncans be deported to Oklahoma. It is clear from the actual use of the statute in the courts of California that it operates and is used to bar indigent persons from California.

I am aware of the cases cited in the appellee's brief, and at pages 40 and 41 of the Attorney General's brief cases which are offered not because of their direct holdings but because in them appear observations as to the power of States over paupers. The language in these cases links paupers in traditional association with idiots and convicts. We submit that the indigent person of today's migration neither falls within the traditional concept of the term "pauper" nor can he be linked with the mentally deficient or with persons convicted of crime. As a matter of fact, in the study of migration in this country, responsible studies indicate that the transient unemployed—today's migrants—have been found to be enterprising, energetic people and actually above the actual family on relief.

The early dicta in these cases here in this Court, cited by the appellee and Attorney General, must be considered, it seems to me, first as expressions of a period before the currently accepted criteria of the adjustment between State and Federal power had been formulated, and then again, *Mayor of New York* v. *Miln* was decided in 1837, and interstate migration at that time could hardly have loomed as being of vital concern, when the first through railroad from New York to Philadelphia had only been opened up three years previously. Those cases have to be read in the light of their setting, and besides the language is entirely too broad in all of them.

In the later cases in that line dealing with paupers, the dicta are used basically merely to bolster up the decisions and there seems to be considerable evidence from the cases and from the facts of the cases in which some of the dicta wers used that the Court used that language withour reexamination of the premises. Now, by very definition and by economic condition, the migratory casual worker and the transient unemployed are indigent. One fact stands out prominently, and that is that the bulk of migration has come from those at or near the relief level and when we remember that the average income of one-third of all American families between 1935 and 1936 was $471, a goodly portion of the American employed population can be classed as indigent without any particular straining of the term.

Mr. JUSTICE JACKSON. How do you use it?

Mr. SLAFF. I use it in the sense, to compress that definition a bit more, I say the term "indigent" means someone whose economic condition is so insecure that conceivably within the near or possibly the more remote future he may require public assistance of some sort, but it does not necessarily imply that he must be receiving public assistance or be an immediate candidate for receiving public assistance. My position is that a great many of America's employed are indigent because if they don't get their Saturday pay check they will have to apply for relief. The Attorney General would attempt to limit it to those who are immediately in need of public assistance and although he concedes that the term includes employables he used the term "indigent" as practically interchangeable with "pauper".

The CHIEF JUSTICE. Does he say that? Is that his definition of the term "indigent," that it is interchangeable with the term "pauper"?

Mr. Justice Black. Is there any official interpretation of the act?

Mr. Slaff. The only official interpretation that I recall is the history of the cases that have been enforced and then again there are other applications of the term in the cases in California. For instance, we submit in our brief the cases of *Calkins* v. *Newton*, *City & County of San Francisco* v. *Collins*, *Goodal* v. *Brite*, and *Alameda County* v. *Janssen*, which, I believe is not in the brief, but which states that a person may be indigent even though he is the owner of real property. But in any event there are cases in California which hold that indigency is a relative term and which support the proposition which I have maintained, namely: that a man who is a hard-working individual, who may not receive his pay check, if he loses his job is an indigent, and in that particular connection may I refer Your Honors to the case of *Goodal* v. *Brite*, which speaks of that class of person.

Mr. Justice Jackson. Are there any legislative hearings which gave an interpretation of the statute?

Mr. Slaff. There are not, sir.

Mr. Justice Jackson. Any history in the legislation which——

Mr. Slaff. Both the Attorney General, by the fact that it doesn't appear in the brief, and I have been unable to find it.

This statute, when enforced, has the effect of barring the movement of America's poor into the State and compelling their removal once they come within the State. Now, in answer again to the question you addressed to me earlier, Mr. Justice Jackson, although on its face it appears to be concerned with the one who is bringing in the indigent, it is also aimed at the indigent himself. Governor Olson, testifying before the Tolan Committee, has said:

"I think it is entirely a false premise to say that we should, even if provisions were made, consider it a sound permanent policy to return people to places where they cannot find a basis of subsistence. We have resources enough to support a population of millions of people more than we have.

"Now I feel that every State in the Union and its resources, California included, should not be denied access to by the man who wants to work, to sustain himself, build a strong citizenship, a home, any more than it should be denied to the adventures of capital. And in the course of time, through an extension of the work of the Farm Security Administration and the coordination of its work with State agencies, we can go forward to make these people permanent residents, good citizens, building our population, enjoying the benefits of our great resources, so that our resources will serve mankind instead of being narrowly considered merely for us who happen to be here now with an attitude and complex of exclusion of everyone else that has not happened to come here with money."

We submit that the national interest in the free movement of employable persons, by no means certain to become and remain public charges, outweighs whatever interest a State may have in their exclusion. And certainly if the movement of indigent migrants into a State may be turned back because of the fear of the creation of a possible burden at some subsequent time to that State, by the same token the principle of freezing of population in areas of origin should be constitutionally sound.

The Chief Justice. If it appears that the indigent person was likely to become immediately a public charge, then could the State put some restrictions on their entrance?

Mr. Slaff. Was that a corollary of my argument, sirs? It was not. I don't have to defend that as a last-ditch proposition. To answer Your Honor, my position would be that even if the person on coming to California needed assistance temporarily, under the commerce clause he has a right to come into California because there is a natural interest in seeing that people move from State to State in building up the country and supplying a corps of labor in the country.

The Chief Justice. Would you say that the State can exclude unemployables for whom no provision is made by relatives and friends?

Mr. Slaff. I am submitting that this interstate commerce rule is easier to state than to apply, and that would on its face present a harder case. It is our proposition that even if you were to reduce the proposition solely to unemployables, and that isn't the history of the statute, that the State of California could not bar them. Whether that principle would find full protection under the commerce clause or under the due process clause, I do not want to decide at this moment, but even the movement of paupers—although we do not have to defend that position—in California couldn't be proscribed by the State. They have a right to the sunshine of California and to the health of California.

The Chief Justice. Does it appear whether this person was a citizen?

Mr. Slaff. He was a citizen of the United States and a resident of Texas.

The Chief Justice. And the person who brought him in?

Mr. Slaff. He was a citizen of the United States and a resident of California. They were brothers-in-law.

There is little question but that this statute interferes with the movement of employables into California and I cite as an example the *Henson case*, submitted by the Attorney General as one of the cases which illustrate the enforcement of this statute. Rosie Henson was a farm worker and her son Fred, 22, also was an agricultural worker. Both were employable, yet she was ordered to return to Oklahoma with her son Fred and directed not to return for 2 years. When enforced, this statute sets up a barrier to the competition of the labor of nonresidents with residents. We submit that an employable citizen ought not and cannot be barred from California merely because of absence of capital, and California has no right in law, good economics, or sound social policy to prevent his entrance.

The attempt of the Attorney General to relate and to limit the construction of the statute substantially to the promotional bringing into the State of nonresident indigents and the activities of labor contractors and other recruiting agencies, it seems to me, must fall in the light of the history of complete nonenforcement of the act against any labor contractor.

The Chief Justice. Granted that there have been no prosecutions against labor contractors, do the facts of the case bring it within such a construction?

Mr. Slaff. They do not, and it is our position of course that that cannot be a construction of this statute because in the 40 years of its existence, not once has it been employed against those who the Attorney General asserts are the act's chief targets. In view of that, it seems to me that the assertion that the act does not seek to keep indigent people out of the State as such is more than a trifle hollow.

The Chief Justice. Whatever its construction, so far as it applies to a certain class of cases, then I am wondering whether this state of facts brings it within such group or limitation.

Mr. Slaff. The Attorney General's construction is that the statute is directed solely, as I see it—I don't want to misquote him, but it is my recollection that it is the Attorney' General's position that this statute is directed against the promotional bringing in of destitute persons over and above a normal entry, and at pages 28 and 29 of his brief he says: "We believe this construction of the statute is related to the mischief which the legislature must have had in mind in the framing of this statute; i.e., the more or less promotional bringing into the State of nonresident indigents. An example of such situation is the operation of labor contractors, private employment services and other recruiting agencies, referred to in the survey filed by the Governor of California * * *"

The entire sweep of it seems to me an implication that this statute in its administration is directed against the bringing in of indigent persons other than a promotional bringing in, whereas, in actuality the statute doesn't specifically concern itself with that at all.

Mr. Justice Black. That seems to imply that the employer of indigent labor is the one against whom it was intended to apply. That is why I asked you if there is any definition by the Attorney General or any viewpoint in the brief to show us just how the act is interpreted.

Mr. Slaff. The section which I read, sir, would appear to be the interpretation of the Attorney General. He says it does not apply to heads of families and those who support families, and as a consequence the statute in his interpretation excepts that class. It leaves only another class, that is, those who bring in an indigent with no obligations as to his support, and the Attorney General maintains it is concerned basicly with such activities as the promotional bringing in by labor contractors, recruiting agencies, etc. Have I answered your Honor's question?

Mr. Justice Black. I will wait until later. I want to know whether employable people and people physically fit, able to do any kind of work and whose only fault is that they are out of a job and out of money come within the terms of the statute.

Mr. Slaff. That is his position, although he says that his position is directed, in the main, against contractors who bring in people. We submit that these facts can't be denied; that the bulk of migration in the past decade has come from people at or near the relief level. We submit that a mobile labor supply is necessary to the national interest for those industries which can't or won't support a resident labor force. Third, population pressures, and the circumstance that the highest birth rates in the country occur in regions where economic opportunity is lowest, require a recognition of the right of those who must migrate out of these regions to migrate into other territories.

Mr. Justice Black. If the Attorney General's argument—that the statute was directed against people in the business of bringing in, like the old labor contractors—if that argument was supported by collective findings based upon reports of committees which establish as a matter of fact that such was the experience of California, would it affect your argument?

Mr. Slaff. It would not. I submit it would be unconstitutional.

The displacement of manpower by the mechanization of industry and agriculture demands that those persons displaced attempt to secure some other employment in other regions. Then, regional differentials in wage levels and the patterns of seasonal labor requirements will continue to induce a flow of persons across State lines.

Sixth, the droughts, soil erosion, plant disease, and insects, have caused and will cause large sectional movements of the impoverished population.

Seventh, the belated flight from stranded areas as national recovery develops must result in many impoverished persons moving across State lines in search of work.

Finally, the demands of the national defense program require more and more fluidity of movement of workers from State to State.

These matters are not merely local in their nature or sphere of operation, nor are they of a character which can properly be regulated only by special provisions adapted to their . Under the familiar doctrine of *Cooley* v. *Board of Wardens*, we submit that the subject of migration, which is an economic necessity in the American economic system is one which is national in character and scope and requires uniformity of regulation affecting alike all States, and that Congress alone can regulate it.

Mr. Justice Douglas. Would you say that this statute was constitutional if passed by Congress?

Mr. Slaff. I don't think that is the corollary of my position. I don't know whether this statute would be constitutional if passed by Congress. I state that the regulation of movement of persons based on economic factors from State to State can't be decided by the States. To what degree the Congress could do it without violating the fifth amendment, I submit, would be for the Court to decide.

The Chief Justice. You say it is a matter of uniformity, and from the point of view of the Attorney General's argument it is an essentially local question based on local conditions within the State, and in the case of *Cooley* v. *Board of Wardens* there was a case of local regulation.

Mr. Slaff. I said that the commerce clause was easier to state than to apply. That is the difference between—or at least it is one of the differences between—the position of the Attorney General and ours. We maintain that the position of the Attorney General, if it is accurately interpreted, means that it is a local question, purely local in its nature and sphere of operation; if that were so, then I have no doubt that by a logical extension of the doctrine of *Cooley* v. *Board of Wardens*, provided the subject could only be properly regulated by provision adapted to the locality involved, would be that the State could regulate.

The Chief Justice. The situation of California might be very different from that of another State. I suppose the matter of protecting a community against an indigent class might be very different in California than in Vermont.

Mr. Slaff. They may be somewhat different but I think that the national interest is the predominant factor involved.

The Chief Justice. What troubles me about it all is in the construction of the constitutional scope of this statute, whether he is within it.

Mr. Slaff. I don't follow Your Honor, I am sorry.

The Chief Justice. As I understand it, you say that the Attorney General says that this statute is directed against promoters bringing indigent persons into the State. Was that person a promoter?

Mr. Slaff. Quite the contrary.

The Chief Justice. Or to be brought in under that description?

Mr. Slaff. If that were the sole construction of the statute it would seem that the appellant would clearly not come within the construction of that statute.

It seems to me, in connection with the commerce clause, that what I can do is to quote Your Honor's words in *De Santo* v. *Pennsylvania*, and you said at that time in your dissenting opinion which has now become the majority view, I believe: "But it seems clear that those interferences not deemed forbidden are to be sustained, not because the effect on commerce is nominally indirect, but because a consideration of all the facts and circumstances, such as the nature of the regulation, its function, the character of the business involved and the actual effect on the flow of commerce, lead to the conclusion that the regulation concerns interests particularly local and does not infringe the national interest in maintaining the freedom of commerce across State lines."

It is clear that this statute is of such a nature and works in such a fashion and so affects commerce, that it affects interests which are national in their nature and influences and impinges on those interests.

Let's take the instant case. It is applied here. The crime is bringing in an American citizen who worked in Texas, who was willing and able to work, and that is the application in this given case.

The CHIEF JUSTICE. This person was brought in by a person who made it a business of promoting? He was a relative. It doesn't appear whether the relative could support or would support this person.

Mr. SLAFF. I think you have to face the fact that this statute appears—this statute finds itself in a setting of a law which has to do with aid to indigents. Now presumably the purpose and object of this statute was to create a situation where the State would not be possibly liable—liable to a potential burden—either in the near or immediate future as a result of bringing in people of an insecure economic position and that now there isn't any legislative history that I have been able to find for the statute. . . . I would assume that that was probably what the statute was originally directed to. But its terms are broad and it can be applied in many instances, as in the given instance. It was applied here in a case where Duncan, the indigent, asked for Federal aid. He never applied for State aid at all. All he did was to go to the Farm Security Administration and say: "My wife is going to have a child. She needs prenatal care." That was the origin of the prosecution in this case.

Mr. JUSTICE MURPHY. How long was the indigent person in the State before he made a request for aid?

Mr. SLAFF. It was about 10 days, and the Attorney General cites some report in his brief which would vary the stipulation of fact to 6 days.

Mr. JUSTICE BLACK. Did he get the aid?

Mr. SLAFF. He did get prenatal and subsequently post-natal care for his wife.

Mr. JUSTICE REED. What constitutional provision prohibits a State's regulation of migration when stimulated by other people?

Mr. SLAFF. I think Your Honor's question contains an implication that isn't present in the statute. You speak of the stimulation of migration. The statute has nothing to do with the stimulation of migration.

Mr. JUSTICE REED. Bring or assist, in the language of the statute.

Mr. SLAFF. And under the broad language of the statute even advice to come to California, knowing that a person was indigent would come under it. The statute even interferes with freedom of speech and the press. I don't argue it at any length in my brief. I thought there were stronger points in the case than that. Actually, under the language of the statute and under any reasonable construction of assist and bring, mere advice to "Come out to California, you will be able to get a job out here. Things may be tough but a man of your kind will be able to find a job."—that would be language which assists in bringing people in, and if the speaker knew the person to whom he spoke to be indigent, under this statute, on its face, that person would be liable to the penalty. None of the cases where there is any record of the history of the enforcement of this act involve that type of situation, but that type of situation could arise under this particular Act.

Mr. JUSTICE JACKSON. Is there any way that you can suggest by which the State that desires to, can protect itself from an influx of people, to take advantage of that policy?

Mr. SLAFF. California has been doing that, but California's Governor says that pressure groups have seized on the migrant problem as a means of lowering all relief standards. They passed settlement laws. They say: "We won't give relief unless they are residents of the State for five years."

Mr. JUSTICE JACKSON. In this case, the aid which this man received, he received by grace of the State?

Mr. SLAFF. He received it by grace of the Federal Government. The aid that Duncan received was paid by the Farm Security Administration and not by California at all. So even if the statute were directed at that type of problem—an influx of people who would immediately go to the State relief rolls—California has protected itself against that. * * *

Mr. JUSTICE MURPHY. You say California has not given the indigent relief?

Mr. SLAFF. That is right, your Honor. And may I at this time point out that with all the to-do about the burden that is imposed on the State, an analysis of the attorney general's brief will indicate that in the period from 1933 to 1940 California spent, of the funds which it used for the relief of hardship and destitution due to unemployment, only 2½ percent of those funds for the relief of nonresident indigent migrants. That appears on page 7. Of $160,000,000 they spent $4,000,000 on nonresident indigent transients. That is because California's policy has simply been that they would not recognize these people having a claim on California and that they must be palmed off on the Federal Government. That may be California's prerogative in establishing what it chooses to think are social policies. But it can't refuse to give them aid and in the same breath say it has a tremendous migratory problem. It has been under its claimed burden because it has chosen to extend its social services to California residents. There are pages set out in the attorney general's brief showing the amount spent by California for various social services and assistance, but that comes under Social Security. You have payments to the needy, the blind, and dependent children that have swollen this total so that it looks tremendous, but it doesn't in any way affect the problem, of the indigent migrant who comes to California.

Now, addressing myself to the due process point, it seems to me that * * *

Mr. JUSTICE BLACK. Do you not raise the privileges and immunities clause, or do you limit yourself to due process? How do you raise the question?

Mr. SLAFF. I raise the question of the fourteenth amendment which includes privileges and immunities and due process. On the question of privileges and immunities there has been considerable split in the Court as to whether or not the right of egress and ingress into a State is within the clause. It is difficult for an attorney appearing before this Court to determine whether the privileges and immunities law is a sound law or not. Frankly, I think the case—and I speak purely personally—can be bottomed on a broader base because when we come into the privileges and immunities clause, if we are going to bottom it on that, since it relates to citizenship it would apply only if the person involved were a citizen.

The CHIEF JUSTICE. Maybe. Both of the men are citizens * * *

Mr. SLAFF. Your Honor, I believe the *Hague* v. *C. I. O.* case said that under the fourteenth amendment the privileges and immunities clause referred to those rights which are related essentially and peculiarly to national citizenship, and if that is the case then you would, if you decided it on the privileges and immunities clause, you would be finding this to be a right peculiar to citizens and if it is a right peculiar to citizens, then of course a friendly alien conceivably might not be covered by that. I think the case might be bottomed more broadly than on that clause. I raised the privilege and immunities point although we ourselves are uncertain as to whether or not it has forceful application or whether the Court has decided that the privileges and immunities clause with relation to ingress and egress is not to be considered.

The CHIEF JUSTICE. Freedom of movement has as much protection under the commerce clause.

Mr. SLAFF. Your Honor stated that in the case of *Colgate* v. *Harvey*, where you said that if protection of that freedom was sought, that privilege was adequately protected by the commerce clause. Addressing myself to the fourteenth amendment, the need of the Nation for a free movement of population is matched by the need of an individual for the same free movement. Granted that that may not be a complete substitute for real security, we cannot forget that, for many, in the last decade it has been the road away from starvation and we point out in our brief that it has been well said that "the right to move unhindered from one place to another is as much an element of freedom as the right to stay where you are", and "mobility is more and more essential to freedom in our modern industrial system, where local industrial conditions are continually changing and where everyone must be able to follow his trade and open up new markets for his personal skill or his products."

This Court held, in the *De Jonge* v. *Oregon* case, that it was beyond the power of a State to make it a crime to assist another in the exercise of his constitutional rights. The problem we pose here is whether Duncan, as an indigent, could have been constitutionally barred from California without any other reason—with pure relation to—his indigency. We submit that appellant's action in assisting Duncan to go from Texas to California was a constitutional right, and that Duncan's action in coming to California was a constitutional right. Now this

Court, in *Gobitis* v. *Minersville*, distinctly pointed out that "the ultimate foundation of a free society is the binding tie of cohesive sentiment and that that sentiment was fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization."

Migration has done that very thing in this country and we submit that freedom of people to go from one place to another is one of the fundamental patterns of American life. The statute here, if enforced, sets up a positive barrier against this free movement. We submit that a State cannot make an individual's economic security and the possession of wealth the touchstone of the right to individual liberty to move from one place to another under our Constitution. * * * Under the circumstances of this case and the issues we have raised we submit that the judgment below should be reversed and the complaint dismissed.

Exhibit No. 14.

ORAL STATEMENT OF HON. JOHN H. TOLAN, CHAIRMAN OF THE SELECT COMMITTEE INVESTIGATING NATIONAL DEFENSE MIGRATION, AS AMICUS CURIAE, BEFORE THE SUPREME COURT OF THE UNITED STATES.

Your Honors, I want to say in the first place that I am deeply appreciative of the courtesy of this Court in permitting me to appear here. This case was argued last April, and I appeared then, being chairman of the Special House Committee Investigating National Defense Migration, as amicus curiae against the statute in question.

At that time, Mr. Justice Roberts, you remember I made the statement that if the California statute should fall, the other 27 penal statutes of a similar nature in other States must fall also, and you became very much interested and wanted to know whether we could get those statutes. I want to report to this Court that we have obtained everything we could get on the statutes and we have a chart in our brief concerning them.

Now, I think I would like to tell the Court in just a few minutes something about our committee.

This committee was appointed in 1940. After our appointment we went to New York, Alabama, Illinois, Nebraska, Oklahoma, and then California. We visited California last, although the problem of migration was considered to be at its worst out there, because we wanted to show this was a national problem. So we went to New York and Mayor LaGuardia was our first witness. He said: "Indeed it is a national problem." We were informed that New York spent over $3,000,000 a year on nonsettled persons. The mayor told us: "We can't cope with the problem without the aid of the Federal Government. We have 100,000 Puerto Ricans in the city of New York alone."

Down in Alabama, Congressman Sparkman didn't think he had any people leaving his State, but we found many 'way out in California. Then we went to Illinois and Nebraska, and I want to report back to this court that we certainly received a wonderful reception from the press and the public.

We didn't know anything about the problem and we don't know very much about it yet. But it is a peculiar thing, Your Honors, while your books are burdened with cases, and millions of dollars have been spent for the protection and regulation of iron and coal and steel in their transportation between the States of this country, yet, so far as I know, this was the first investigation of its kind dealing with human interstate commerce. Why, we have spent hundreds of thousands of dollars in the Congress of the United States to regulate and protect the migration of wild ducks and geese and give them feeding grounds in Canada. But in traveling 50,000 miles this committee didn't find any feeding grounds for migrating human beings.

This is one point I want to make, if I never make another. We are not concerned with the perennial tramp or hoboes, or convicts. We are concerned with good American citizens who have to leave their farms and homes because of circumstances over which they have no control. What else can they do? They are not going to remain there and starve standing still. Congressman Curtis, of Nebraska, a member of the committee, was amazed to find at our hearings in Lincoln, Nebr., that 32,000 of his people had had to get up and leave. When the cows go, horses go, farms go, they have no choice but to take to the road.

We also found, Your Honors, that in the Great Plains States that used to have, at one time, fine, profitable farms, 5,000,000 acres 25 percent of the top soil is gone. Why, the Great Plains States lost 1,000,000 persons in 10 years and California gained over a million people. Now the question that was asked here by Mr. Justice Black was: What are we going to do about that? We have recommended to Congress a fourth category for the Social Security Act under which general relief for nonsettled persons can be provided. And why not? We had 4,000,000 of them on the road last year. Who are they? Good American citizens, losing their residence in their home State and not gaining it in any other—you have 2,000,000 Stateless people in this country. Is that good for the morale of this country? It is impossible to divorce civilian morale from Army and Navy morale and what strikes at civilian morale strikes at our national defense.

May it please Your Honors, in traveling 50,000 miles with my committee during the last year and a half, I have come to the conclusion that the free flow of human commerce is just as important as the free flow of the products of man—iron, coal, and steel. Now, I have no more quarrel, as I have said before, with the California statute than I have with the other 27 penal statutes in other States. I come from California. But in 28 States of the Union those statutes make poverty a crime. If you can have that in 28 States in the Union, you can have it in 48 States, and what is going to become of the millions of American citizens who are citizens of these States? Are we going to have a Balkanization of this country? We cannot put swinging gates on the borders of our States, open them, like now, and then close them when depression comes. If we all belong to the great sisterhood of States, what good is that constitutional right if we cannot go and see our sister States unless we are rich?

Now, here's a very interesting thing. We just returned from Detroit. We are addressing our attention to the problem of what is going to happen in the post-war period. Of course we are all sailing pretty high now, but I am of the firm conviction, after our investigation, that unless we can find some plan to cushion the post-war slump, it is going to be as dangerous as any attack from without. But what is the position of this country today? Your Navy Department is advertising in the newspapers of this country for skilled laborers to go from their home States to other States. They thereby lost their legal residence in the State from whence they came. In California it is 5 years before they can qualify for relief. But here we have migration going on in the name of national defense in this country today. According to the appellant's brief there are only 475 transient cases in the entire State of California today out of over 6,000,000 people.

Now, I don't quarrel with the fact that California has a migratory problem. Of course it has. There comes a saturation point when some States can't carry it, and when they can't, it is the Federal Government's duty to protect the American citizens and not let one of our States go down. California pays the highest rate of any State in the Union for old-age assistance.

The migration of destitute citizens, Your Honors, is caused by many factors. There is worn-out soil. The South is the hardest hit on that because it has tilled the poorest soil for the longest time. There is mechanization and unemployment and ill health. There is no single solution, because there are too many factors. But we are trying to approach it in a reasonable way and I think we are making some progress.

Now, as I told Your Honors, I am not highly trained in the law, but, according to the language of this statute, what does this high tribunal have confronting it? You have a statute making it a crime to transport into the State or bring into the State of California an indigent person, an employable person, a citizen of the United States entitled to all the privileges and immunities of the different States of the Union. So he gets into California and is faced with this statute. By the way, we examined over 300 migrants and this is the only thing they all said: "We thought we were citizens of the United States." They feel they are such under the provisions of the fourteenth amendment that: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." That is one section of the Constitution they know. Anyway, Duncan gets into the State. His brother-in-law brings him in. The State of California, according to its own constitution, is one and inseparable from the Union. California says to Duncan: "You cannot get on any relief roll or become a public charge in the State of California for a period of 3 years"—it's 5 years now. I never could understand this indigent proposition. You can study this question any way you want but it is difficult to understand why these States are so fearful that a man who is poor is liable to become a public charge. The laws of the State of California say that he can't get a nickel of relief for a period of 3 years. Duncan is an employable person. And is this court to say that after those 3 years he will still be indigent and will not have employment? Duncan never asked a dime from the State of California. He received assistance from the Federal Government.

I would like for a moment now to address myself to the contention made by the attorney general. In the first place, as I understand it, he claims and will maintain that Duncan did not have relatives who were liable for his support. Well, the statute doesn't say anything about that. It says "any person." I never knew that you could read exceptions, presumptions, or intendments into statutes. And the statute doesn't say "promoters, transporters" or anything of that kind. It just says "every person." It is all-inclusive.

There hasn't been any prosecution according to the brief of the attorney General against any so-called promoter. Not one. They have all been relatives.

I wonder if I could read from the appellee's brief very quickly the typical case of *People* v. *Duncan.* Buddy Duncan was his name. This is on page 77 of the appellee's supplemental brief:

"Complaint sworn to by A. H. Kincaid on December 19, 1939, charged that Buddy Duncan, on or about April 29, 1939, in violation of section 2615 of the Welfare Code 'did willfully bring into the State of California certain indigent persons, to wit: Lydia Duncan, Inez Duncan, Billie Duncan, Wanda Duncan, and Joe Wayne Duncan, all of said indigent persons not being residents of the State and said defendant well knowing said persons to be indigent.'

"Docket entries as follows: '1939. December 19, complaint filed. December 19, warrant issued; bail, $1,000.' "

Not much chance for that indigent person to put up $1,000.

"Plead 'guilty.' * * *

"The court pronounced judgment as follows:

"It is hereby ordered and adjudged that you the said defendant serve 6 months in the county jail of Tulare County, said sentence being suspended for a period of 1 year, upon condition that you return to the place from whence they came, Lydia Duncan, Inez Duncan, Billie Duncan, Wanda Duncan, and Joe Wayne Duncan, or to the State of Arizona.

"No information is available from Tulare County authorities concerning the defendant or the alleged indigents.

"However, the Farm Security Administration has furnished information on a case receiving assistance from that agency in which the names of the alleged indigents appear, and which is as follows:

" 'Duncan, Lanny. Family composition: Lanny, 46 years; wife, Lyda, 40 years; Riley, son, 21 years; Billy, 19 years; Doris, daughter, 13 years; Joe Wayne, son, 4 years. They have been known to this agency in Imperial, Santa Clara, San Joaquin, and Tulare Counties and aid has been extended in the following months:

" '1938: February, May, June.

" '1939: June, August, September, October, November, December.

" '1940: January through September and November and December.

" 'The family stated that they had formerly lived in Pontotoc, Okla., leaving there in February 1938. In October 1939 the two oldest boys reported 6 months' work and the father, Lanny, reported 2 months' work in the previous year.' "

And then, remember, they were ordered to return from whence they came. In the argument of the attorney general's brief, he claims that they are after transporters and not after relatives. However, all the prosecutions mentioned in the brief show just exactly the contrary.

There is just another thing, while I think about it, and that is that the appellee also maintains that they are after Edwards. They don't care about indigents, and Edwards, the transporter, is all they are after. I would like to call Your Honors' attention to the fact that if anybody is guilty the indigent is just as guilty as the transporter. Section 31 of the Penal Code of the State of California says that persons who give aid or advice or encouragement to others to commit a crime within the State and are afterward found therein (Duncan was found there in), and whether they directly commit the action constituting the defense or aid and abet it in the commission, they are guilty.

Mr. Justice Douglas. Are those citations in your brief?

Hon. John H. Tolan. No; they are not. I shall be glad to present them to you. He also claims, as I understand it, that Edwards, the transporter, being a citizen and resident of California, they have a right to convict him. Well, personally, I look at that proposition this way: You certainly cannot convict Edwards for the exercise of a constitutional right. If Duncan had a constitutional right, penniless though he was, to go into California, you can't any more agree to Edwards' conviction by the statute of the State of California than if California had a statute making it a crime to import wheat and Duncan was wheat, or the constitutional right of interstate commerce steps in and protects Edwards.

My time is getting short and I just want to read from an opinion of the Attorney General of the State of California, and I want again to say to Your Honors that the instant case has no parallel. You had border patrols in States where they arrested these indigents and sent them back—Colorado, Florida, and California. And I want to say to Your Honors, without their having invoked the Constitution in court, its sacred shadows solved every one of those border patrol problems. Senator Johnson, then Governor of Colorado, Governor Cone of Florida, and Attorney General Webb of California, all came out and said that the border patrols were operating in violation of the Constitution of the United States.

If Your Honors please, right here I should like to quote a statement of Attorney General Webb, 25 years attorney general of California, who resigned a couple of years ago and was succeeded by Mr. Warren, a very able attorney. You will find this statement on page 29 of the supplement to my brief.

"As between the States, the right of citizens to ingress and egress has very generally been recognized and upheld.

* * * * * * *

"I have gone somewhat at length into these matters in order to point out to you some of the difficulties which confront us. So far as we may rightly go in this matter the conditions warrant our going. In so dealing with the question, however, we should always keep in mind the relative rights, obligations, and duties of our sister States and of the citizens of the United States. Other States will not be expected to complain of that which we rightly do, but they may be expected to complain, and their right to complain must be admitted, of those things which we wrongly do.

"In this as in other matters we should steadily keep in mind that we are one of the sisterhood of States, and while asserting our own rights we should recognize fully the rights of other States. As other States must do unto California, so must California do unto them, for such is the mandate of the Federal Constitution."

I want to return, Mr. Chief Justice, to a question you asked awhile ago.

Some exceptions have been indicated. Let's assume for the purpose of argument that a State may refuse to admit "persons having contagious diseases, fugitives from justice, persons convicted of crime, and persons whom the State may consider dangerous to its peace or who would, upon their entry into the State be subject to arrest and imprisonment by virtue of some existing statute of that State." But, of course, we do not have any of those situations here. Duncan is not a convict. As Chief Justice Hughes said when the case was argued last April, "He is not accused with being a pauper, a convict, a vagabond, or a vagrant. He is simply charged with being an indigent."

I have gone to some length in explaining this case. In dealing with this question, however, we should also keep in mind the relative rights and obligations and duties of the citizens of the United States. Other States will not be expected to complain of that which we rightly do, but the right to complain must be admitted of those things which we wrongly do. Each State should keep in mind that it is one of the sisterhood of States. As other States must do unto California, so must California do unto them. For such is the mandate of the Federal Constitution. I thank you.

Exhibit No. 15.

ORAL STATEMENT OF W. T. SWEIGERT, ASSISTANT ATTORNEY GENERAL OF THF STATE OF CALIFORNIA, BEFORE THE SUPREME COURT OF THE UNITED STATES.

Mr. W. T. Sweigert. The attorney general of California appears here today by myself and my associate, Mr. Hiram W. Johnson 3d, in response to a special request made by the court last May to appear here and to present the views of the State of California, particularly, as the court said, with respect to the administrative and judicial interpretation of this particular statute by State authorities. We have tried to be helpful to the court and in connection with this appearance we have filed with the court a separate supplement containing background, information, and data, selection of special cases which we believe may be helpful to the court to the extent that it wishes to pursue in more detail matters referred to in the brief or in this oral argument.

At the very outset I would like to say in respect to Congressman Tolan's reference to the so-called opinion of Attorney General U. S. Webb, that the particular opinion which the Congressman read to the court was a letter written in 1936 by the then attorney general of California to certain persons in the southern part of the State who had advocated and for a time set up an extra-legal border patrol during a crisis in connection with the migrant question. That extra-legal border patrol has nothing to do with this particular statute or with this particular case. Almost immediately it was declared by the attorney general to be an unlawful set-up not provided by law, and in connection with that ruling he did point out to those who had advocated such action that they should bear in mind that California should do to other States as California would want other States to do to it. But I call Your Honors attention to the fact that in the letter the attorney general said that "Section 647 of the Penal Code (which is nothing more than the vagrancy section), to which we have referred, and other provisions of the statutes—(he may have intended this particular statute before the Court but I don't know whether he did or not), may subject persons coming across our borders to arrest immediately upon their entry into this State, but none of these statutes confers on police officers the right to forcibly prevent such entry." And I point that out to the court to distinguish between an extra-legal set-up, which had nothing to do with the statutory set-up of the State of California, and the validity of the particular statute which is now before the court.

I was inclined to take up the question asked by Your Honors of the preceding counsel, but I think I can present to the Court more adequately the views of the State of California if I start at the beginning and go on to the end. I have in mind, of course, that what I may say may lead to the posing of questions of me by Your Honors, and I confidently expect it.

I may say at the outset, if the Court will indulge in a momentary perspective of the case and its background, a circumstance which to my mind proves that the State of California is not unmindful of its history and heritage, of the brain and heart and brawn that has come to it through the years, and the good that can be derived from that particular source. The situation is, that although the particular statute has been on the books of California in one form or another for about three-quarters of a century and although it is patterned on laws long in force in 27 other States of the Union, and although California has borne a heavier share of migration—and by that I mean a heavier share of indigency in migrants than any other State—and although this statute has been available all the time, our research discloses that it has been resorted to in California but 13 times in all that period, and then within a period of 90 days at the end of 1939 and 1940, and then in only three counties of the State, two counties other than the particular Yuba County in which this case arises.

That is truly remarkable in view of the fact that in the 10-year period from 1933 to 1940, out of approximately a million persons migrating to California, approximately 32 percent, over 300,000 received relief in California within a year and a half after their arrival. It is true that about two and a half million dollars have been expended out of actual State funds for the relief of migrants on their arrival in the State. In addition large sums have been made available by the Federal Government. This does not imply that California, through this statute, has set up a "Chinese Wall" around itself or a statutory border patrol, but it does imply that the State of California is faced with a problem that is serious and affects its citizens and their welfare not only with respect to its health and crime and social problems which are attendant with the heavy influx of persons unable to maintain themselves. I might say that California has never refused to help the nonresident indigent person. The counties of California have for years had power under the State statutes to give emergency aid to persons in need of relief, regardless of whether or not they complied with the residence requirements. That is a particular dictate of humanity and it is not sufficient to say that an indigent destitute migrant in the State of California is not a problem to the State of California because a person in that condition is a fact and not a theory and must be dealt with, and thus the tendency of this particular situation affects, regardless of residence restrictions, the welfare of the State of California.

Now, addressing myself to the administrative interpretation of this particular statute, there is no specific rule in the State of California or in any of its departments or boards or agencies at all concerned with the subject of construing this particular statute. It is true, however, that the various counties of the State have established certain rules which are pertinent to the interpretation of what is meant by the term "indigent." It is also true that the State relief administration in California, which operated independently of the county systems, has extended relief directly to alleviate destitution and hardships due to unemployment. It has also adopted certain rulings which may bear on the interpretation of the word indigent. We have set forth all those matters in the brief.

I want to call Your Honors' attention to several statutes which bear on what we mean by indigent.

Mr. JUSTICE JACKSON. Even if it be interpreted otherwise in some other cases, for purpose of resolving the questions here——

Mr. SWEIGERT. That is true and I don't think there is any conflict of the word "indigent" and the interpretation that has been applied here.

Mr. JUSTICE JACKSON. Would you say that is within the true meaning of this particular case?

Mr. SWEIGERT. I would say that is within the true meaning of this particular statute. I might state the reason. We take the position that this statute, if the Court please, first of all refers to indigents. In this sense an indigent person is shown, by the decisions in California construing the term and also by other related statutes, as a person destitute of property or means or resources with which to support himself or his family, those entitled legally to his support, and who is therefore dependent upon the only alternative, that is public aid.

Mr. JUSTICE REED. What do you mean by "means"?

Mr. SWEIGERT. I mean property, means, resources.

Mr. JUSTICE REED. Ability to work is not sufficient.

Mr. SWEIGERT. No. We say that even though a person has ability to work, by reason of the fact that he cannot obtain that work, he is in a condition of indigency. To put any other construction on this statute would mean that persons who stand in need of public relief would be ruled out because they had the ability to work. But ability to work will not feed the hungry stomach if the work is not available. It has been held that the term "indigent" has not a limited meaning—that it applies to persons who by reason of unemployment or any other cause are destitute and without means to support themselves and their families. We look, if the Court please, to the condition, and not to the cause of the condition. I would say, however, that the term "indigent" excludes those who have resources, funds or property which is available for their support, and also excludes those who have available and ready credit or those who have relatives legally bound to support them and able to do so. It also excludes those who have friends willing to take care and support them. That is not my view. It is a construction which is almost a reflection of the view of one of the provisions of our welfare boards which provides that counties shall relieve and support all indigent poor, when such persons are not supported and relieved by their relatives or friends or by their own means. * * *

I would say that the term "indigent" is not limited to those who are physically or mentally unfit to work. As I have stated before, it applies to those who for any reason are in a condition of destitution. Now, I might say that——

The CHIEF JUSTICE. What if they have friends? How does that appear on the record?

Mr. SWEIGERT. In this record the peculiar situation is that this party stipulated to the fact that——

The CHIEF JUSTICE. Did they stipulate anything about that fact?

Mr. SWEIGERT. They stipulated to the fact that Duncan was an indigent person.

The CHIEF JUSTICE. Do you think that his stipulating that his relatives couldn't or wouldn't care for him——

Mr. SWEIGERT. Not necessarily.

The CHIEF JUSTICE. Either this statute was given a different application from that which you state or an unconstitutional application if you are now trying to define what is constitutional.

Mr. SWEIGERT. In this case, if the Court please, Duncan was brought by Edwards into the State. Edwards went out of his way and brought him back from Texas and almost immediately upon entry into the State of California he applied for relief and obtained relief and the facts in the record indicate that he exhausted his supply of means by the time he arrived in California.

The CHIEF JUSTICE. It doesn't say anything about those relatives.

Mr. SWEIGERT. No, it doesn't. There is nothing in the record to the specific effect that there were no relatives who would support him or take care of him. The attorney general was not connected with the case until he received the request of the Court to appear here. From then on we made a careful study of the case. Our construction is that the statute was properly applied to the facts of this case.

The CHIEF JUSTICE. The construction was not, then, that which you give it, for no matter what the relatives were willing or able to do, if he was without funds and came into the State the statute applies to it.

Mr. JUSTICE ROBERTS. Do you infer an inability of the relatives to support him from the fact that he applied for relief?

Mr. SWEIGERT. That is the essential fact.

The CHIEF JUSTICE. You must state every fact most favorably to the constitutionality of the statute.

Mr. SWEIGERT. That is true. There may be some close technical questions that may present themselves to this Court by reason of the meagerness of the record, but I would like to simply reread certain facts. They were read before but we might stress them at this particular point. Here is the stipulation of facts on appeal:

The appellant, Fred F. Edwards, a citizen of the United States, and a resident of the State of California, left Marysville, Calif., on December 21, 1939, for Spur, Tex. The object of his trip was to bring his wife's brother, Frank Duncan, a citizen of the United States and resident of Texas, back to Marysville. Appellant arrived at Spur, Tex., on December 24, 1939, and learned that Duncan then had no job (folio 17) and had last been employed by the Work Projects Administration. Appellant at that time learned that Duncan was an indigent person and at all times mentioned herein, appellant knew Duncan to be indigent. It was agreed between Duncan and appellant that appellant would drive Duncan from Spur, Tex., to Marysville, Calif., in appellant's car. Appellant and Duncan left Spur, Tex., on January 1, 1940, entered California from Yuma, Ariz., on January 3, 1940, and arrived in Marysville on January 5, 1940. At the time Duncan arrived in Marysville he was without funds and lived at appellant's home until he was given assistance by the Farm Security Administration about 10 days after his arrival in Marysville. Duncan had no employment after his arrival in California, until after he was given assistance by the Farm Security Administration. Duncan had about $20 when he left Spur, Tex.; this money was all spent before his arrival in Marysville.

Now, if the Court please, whether from that we are to infer that there was any arrangement at the time of the indigent's entry into California whereby he would be taken care of by his relatives or friends, it probably is a factor that might eliminate him from that category of indigent persons.

Mr. JUSTICE ROBERTS. Do you think that the stipulation is tantamount to a plea of guilty?

Mr. SWEIGERT. I think it is.

The CHIEF JUSTICE. Guilty of what?

Mr. JUSTICE ROBERTS. Guilty of being an indigent person, whatever that may be.

The CHIEF JUSTICE. If that is so, a person could not bring an indigent person into the State for the purpose of taking care of him. You are guilty regardless of whether you have taken care of him or not.

Mr. SWEIGERT. The parties did engage in the stipulation of fact. * * *

The CHIEF JUSTICE. There isn't a single fact to show whether the defendant was willing to take care of his relative or not.

Mr. SWEIGERT. There is no express statement in the record.

The CHIEF JUSTICE. Then, there would appear to be no question of this person without means violating the statute, and now we come to the question whether it is constitutional.

Mr. SWEIGERT. I think that is true. I think his intent was to plead guilty as far as the record on appeal was concerned. * * *

The CHIEF JUSTICE. The plea meant he was guilty—the plea made in the stipulation. You say to bring an indigent and unemployed man into the State violates the statute and the question is: Is that statute likely to violate the Constitution?

Mr. SWEIGERT. That is correct.

The CHIEF JUSTICE. That is the real question.

Mr. SWEIGERT. And that is what I will argue.

Mr. JUSTICE BLACK. Was anything said about his health or his ability to work?

Mr. SWEIGERT. No; I don't think there is any express statement upon that point?

Mr. JUSTICE MURPHY. It doesn't make any difference?

Mr. SWEIGERT. No; it doesn't.

The CHIEF JUSTICE. We can assume that he was in good health and able to work, and that relatives were ready and able to take care of him.

Mr. SWEIGERT. No. I don't think we can assume that, not from the record in this particular case.

The CHIEF JUSTICE. He was convicted on a state of facts which said nothing as to that and therefore we must suppose that the statute prohibited the particular thing that the stipulation says he did.

Mr. SWEIGERT. That may be a particular circumstance. * * *

The CHIEF JUSTICE. Then is the statute constitutional? Is that the question? * * *

Mr. SWEIGERT. No. Unless we can properly digest this record, the record first of all states in the stipulation of facts that Edwards, the defendant, knew that Duncan, the person he brought into the State, was indigent, but the trouble is that it doesn't go any further and state particularly what the facts and circumstances were in the case and there are many circumstances and facts which enter into the question of whether or not a person is indigent. Not that there is any uncertainty about the term. The essential thing is that he is a person destitute of means, of subsistence, property, responsible relatives, credit, and friends to take care of him, and that the necessary and immediate implication of his condition is that he is dependent upon the only alternative, public aid.

Mr. JUSTICE REED. You say that this stipulation means that he admitted he was indigent in the sense the California administration defined it.

Mr. SWEIGERT. I think that is exactly the intent, although frankly, I am willing to argue the scope of this statute as to what it means with respect to indigency.

Mr. JUSTICE REED. But you don't accept the Chief Justice's suggestion that a person who has relatives to support him may still be indigent.

Mr. SWEIGERT. I say that is not the final element in indigency. The essential factor is destitution, lack of resources or means to support one's self to such an extent as to be dependent upon the only alternative, public support. That is the ultimate meaning of the term indigency.

The CHIEF JUSTICE. Or lack of his means or lack of his relatives' means.

Mr. SWEIGERT. I do concede that if the question were submitted to a court or a jury to determine whether the person was indigent within the meaning of the law and perhaps an arrangement were made for friends to take care of him, that might be a circumstance to show that he was not an indigent within the meaning of the law, but it is not the determining factor.

Mr. JUSTICE BLACK. Your position is that, properly construed as far as the statute is concerned, a person would not be indigent if he had relatives to support him.

Mr. SWEIGERT. I don't say that that is true one way or another. But I concede that if a person has relatives to support him that fact bears on the ultimate question.

Mr. Justice BLACK. But even if California didn't have that construction on a law such as this—is it your position that it is within the constitutional power of California to do this?

Mr. SWEIGERT. Absolutely. It is within the power of the State of California to enact a statute—not excluding indigents—but making it a public offense for a person to bring or assist in bringing an indigent person, in the sense in which I am using the term, into California with knowledge that he is an indigent person.

Mr. Justice BLACK. Just to be sure. If the statute prohibits bringing them in would that mean railroads?

Mr. SWEIGERT. No. I don't think that it would apply to a carrier unless it were found that the carrier brought in an indigent person with full knowledge of his indigency.

Mr. Justice BLACK. Unless they knew it. But as I read the act it would prevent a man being brought in by anybody else under any circumstances in which they knew he was an indigent. That would mean by a railroad or any other way. Otherwise we must construe the statute to mean that the only way you could get there would be to walk.

Mr. SWEIGERT. There is nothing to warrant saying it does not apply to carriers. But it is only by a rather remote forecasting of circumstances that the carrier would be invested with the specific required element of knowledge.

Mr. Justice FRANKFURTER. Does it apply to a father bringing in his indigent son or to a son bringing in his indigent father?

Mr. SWEIGERT. No. The only sound construction of this statute is that no offense is committed, that is, no person could be held guilty of bringing or assisting in bringing an indigent person into the State when there exists between the accused, the bringer-in, as it were, and the so-called indigent person, a relationship which gives rise to a duty of legal support as between husband and spouse, parents and children.

Coupled with it, it wouldn't apply to any case in which the person charged brought into the State of California, let us say, his parents or his children, persons to whom he was under a legal obligation to render support. And the reason for that limited interpretation of the statute, if the Court please, is this: That it will be noted that, to hold that a person that brought his own children or parents to whom he owed a legal duty of support was guilty of the offense denounced, would be tantamount to excluding the accused himself because of his own indigency.

Mr. Justice FRANKFURTER. Does a son 30 years old have a duty to support a father 63 years old?

Mr. SWEIGERT. Yes.

Mr. FRANKFURTER. How about brother and brother?

Mr. SWEIGERT. No. Spouse, and children and parents.

Mr. Justice DOUGLAS. Then as far as the construction of this particular statute by authorities in California is concerned, the *Duncan case*, referred to earlier, seems to go against the construction you have now.

Mr. SWEIGERT. I have in mind the reference made by counsel to that *Duncan case* and in a few moments I was going to review the 13 other cases. I take it that there is only one case of the 12 whereby it might be definitely said that the authorities proceeded to judgment against a defendant who occupied a relationship involving the duty of legal support to the person brought in. That was in the case of Henson. There are three other cases in which the relationship may have existed but it cannot be definitely determined from the record. But in quite a few cases, although warrants had been issued for the arrest of persons occupying that position, no prosecution was ever conducted. They never went to the stage of return of the warrant. So it can only be definitely said that there was only one in which the authorities proceeded to judgment.

Mr. Justice FRANKFURTER. You remarked that this statute is adopted from the form of an old atatute of 1901 * * *

Mr. SWEIGERT. No, I would not say that. I have set forth in the supplement of the brief further detail on it. I would say that the statute has been on the books since 1861 substantially in its present form.

Mr. Justice FRANKFURTER. But not in its original setting. Is there any limitation to this statute so that there is any warrant for that argument in the setting it had in its original enactment? Is it part of a relief statute which, in the other portions of the code of enactment, supports the argument which you just made that it doesn't apply to instances in which there is a duty of support?

Mr. SWEIGERT. Nothing directly bearing on the question except the fact that an indigent person in California is a person who is destitute of means of support without relatives, friends, or any other means or resources, the implication being that he is depencent upon public aid. There is nothing in the literature, nothing in the background of this statute, to throw any express light on the fact whether the phrase ever was intended to apply to a case where the bringer-in bore a relation to those brought in involving the duty of legal support, but I do think this is an interpretation of this statute that has warrant in the decision of this Court in the case of *Church of the Holy Trinity* v. *the United States*, in which a very interesting situation developed and the Court is already cognizant, probably, of the circumstances that then existed. It was a question of construction, not of constitutionality in that case. And if Your Honors recall, the circumstance there was that a Federal statute prohibited the prepayment of transportation of immigration of any alien into the United States under contract to perform any service, and the Court said this should not be applied to the church in New York and the alien minister of the gospel.

I think, if Your Honor please, that that decision furnishes ample support for this approach to the construction of the statute. And for this reason, to hold otherwise would be tantamount to excluding the accused because of his indigency, because under the law of California and all other States imposing the duty of legal support between parents and children, and spouse and spouse, those persons are one so far as the statute of this kind is concerned, and we cannot assume that the legislature in enacting this statute intended that the words "bringing in or assisting in bringing in" should apply to a case of that kind, for the reason that there is no offense in the law of California committed by the mere entry of an indigent person into California. The legislature, in drawing the statute, avoided the denouncement of mere entry of an indigent person as a crime, and we think that would contrary to the meaning of the term "bringing in or assist in bringing in".

Mr. Justice Jackson. Assuming that the construction which you put on that statute is correct, I'd like to hear you test the validity of your act by the assumption that goods are involved instead of human beings. Suppose California find that its markets are being flooded by certain cheap goods imported from other States. It is decided that it can't exclude those goods because of the Federal power over interstate commerce. Is it then free to pass a statute which would forbid anyone to furnish fuel or water to the train bringing in such goods?

Mr. Sweigert. Manifestly not.

Mr. Justice Jackson. Then the goods have greater protection under the Federal Constitution in their right to move about than have human beings.

Mr. Sweigert. No.

Mr. Justice Jackson. Or the State has less power to decide as to whether goods are injurious to its economy than presons.

Mr. Sweigert. I think the rule is precisely the same and I think of course there is involved here the question as to whether or not the State, within the meaning of the commerce clause, has the right to enact a law which will in some way deal with or control the entry of persons in the condition of basic destitution. I think the State has such power, although it has not exercised the power to exclude indigent persons. The State has decided that under the construction which we have given the statute "bringing in and assisting in bringing in" to California a person who is indigent, within the definition of the term, is an act which in itself is related to a local problem in California, not only the expense, but housing and health problems connected with the influx of indigent persons. It has recognized that problem, determined the extent to which it will deal with it, not to the point of exclusion, but defining as an offense that particular act which in the judgment of the legislature is unwarranted and stimulates the influx which would follow a normal course if left entirely to the indigent persons themselves.

Mr. Justice Jackson. That could not be prohibited in the case of goods.

Mr. Sweigert. I did not note from Your Honor's statement that the goods would be of such type that the State could guard itself against them on a quarantine basis. If that were the case, the State could control to a limited extent the importation of goods which one assumes could be excluded on quarantine. So the principle is the same. Some mention was made, and I want to call attention to these cases before my time is up. The application in the statute to carriers is a matter of interest according to the questions of the Court, and I want to say that in several cases interpreting similar statutes, very interesting holdings were reached. It has been held, for example, in the case of *Fitchburg* v. *Cheshire Railroad Company*—this case is not in our brief, but with the Court's permission I would like to supply any omission by a short memorandum afterward——

Mr. Justice Black. Will you give the citation to that case?

Mr. Sweigert. 110 Mass. 210. In this case, under a statute which provided that if a foreigner, brought into the State by any conveyance by land, or by any lines of communication established for the regular transportation of passengers by water, not extending beyond or stopping at places without the United States, "falls sick, or from any cause becomes a public charge within 1 year thereafter, the Commonwealth, or any place incurring expenses for his support, sickness, or burial, may, in an action of contract, recover the amount of such expenses of the corporation or party by whose means the person was brought into the State; provided that the party so liable shall be notified of his liability in each case as soon as practicable, in order that such party may, if so disposed, provide means of support or removal."

That was a case which involved a railroad carrier bringing such a person into the State, and the Court said:

"If this statute is to be so construed as to sustain this action, it imposes a heavy liability upon every railroad or other carrier of passengers who may transport a foreigner or a citizen of another state into this state, and upon every person who may happen to carry such person across the line of the State. It would operate with especial hardship in the case of railroads and other carriers of passengers. It would fix upon them a liability, not as a penalty for any violation of law, but a burden imposed for performing a legal contract which they cannot refuse to make. A common carrier of passengers is obliged to carry any passenger who pays his fare and conforms to the reasonable rules established by the carrier. He has no authority to examine the passenger and ascertain the place of his settlement, or to refuse to carry him across the state line. If he does so refuse, he renders himself liable to an action for such damages as a jury may assess. No railroad corporation could practically protect itself against this liability, and no provision is made in the statute for their protection. A construction which would lead to such unjust results ought not to be adopted unless such is the necessary meaning of the language used in the statute."

Mr. Justice Black. That is an old statute, and we must look to its meaning as it has been construed by the older cases.

Mr. Sweigert. It is not of any significance that the case I am referring to is an old case. The construction placed on this statute by the court was as follows:

"We think, by the fair construction of the statute, the terms 'by whose means' are substantially equivalent to the terms 'by whose procurement or instigation,' and that the intention was to impose the penalty upon the corporation or party only who had some agency in inducing the poor person to come into the state. Without undertaking to say what acts of procurement or inducement would bring a party within the purview of the statute, we think it does not apply to a common carrier of passengers who brings into the state a person who has no settlement here, in the ordinary course of his business, and without any knowledge or reason to suspect that such person is likely to become a charge upon the public."

The point that I make in that case is that these statutes should be construed and limited to their true intent and the words "bringing into the State of California" or "assisting in bringing into the State of California" must be construed to apply to those persons who enter into some arrangement by which they willfully bring a person into the State of California with knowledge that he is in an indigent condition and bearing no relationship to that person which would involve the duty of support. So construed, if the Court please, and within this limited sense, I think it is well within the power of the State of California to enact this statute. Obviously, with such construction of the statute any effect upon interstate commerce would only be a remote consequence and not an interference with interstate commerce in any true sense of the word. I have not had an opportunity to go * * *

The Chief Justice. How do you say remote? The very act of interfering with interstate commerce brings it within the statute.

Mr. Sweigert. I had in mind in connection with Your Honor's query the case of *Williams* v. *Fears*, with which the Court is undoubtedly familiar. I think the principle of the decision in that case comes strikingly close to the case here. It was the case of hiring persons to work outside the State. The Court held that it was a tax or revenue statute. However, the Court went on to say that this was a particular situation that could be well grounded upon the police power of the State.

The Chief Justice. That is different. In other words, it was a valid exercise of the State police power even though it impinged upon the commerce power.

Mr. Sweigert. That is correct, and that is what we see as the situation here. The Court said:

"And for the further reason that the State could properly discriminate in its police and fiscal legislation between occupations of similar nature but of dissimilar tendency; between those which tended to induce the laboring population to leave and those which tended to induce that population to remain."

And we say here, that the denouncement as a misdemeanor of the act of bringing in or assisting in bringing into the State of California, with full knowledge that the person was indigent in the sense that I have used the term, is the denouncement of an act which in itself is reasonably related to a mischief within the State of California—that is, the welfare problem created by the entry into the State by a large number of indigent persons, the legislature here having determined that it did deem it wise to exclude indigent persons from entering the State even if it had the power to do so. But it has, in a limited way, attempted to deal with the problem, to alleviate the condition, by denouncing as criminal only the act of those persons who go out of their way as volunteers to bring persons into the State of California. I include within the meaning of the statute any person who as a mere volunteer goes out of his way to bring into the State of California with full knowledge of the indigency of that person. He has committed an act that is well within the purview of the power of the State of California to denounce as a crime on police grounds, and in that sense involves a matter of local police power and not any more an interference with interstate commerce than, let us say, the statute involved in the case of *Williams* v. *Fears*.

The CHIEF JUSTICE. But if it did interfere with interstate commerce, would you say it would be permissible?

Mr. SWEIGERT. I have that in mind. I have set forth in the brief the list of cases on which we depend. Recently decided was the case of *Thompson* v. *State of California*. We have also in our brief the *Brady case*, in which the State of Ohio refused to allow a common carrier to use its highways because they were so crowded that it created a hazard to safety. That was a case of interference and it was grounded on safety of the people of Ohio.

Mr. JUSTICE JACKSON. But your statute could not be used against contract labor, because the man coming into the State has the assurance of a job and he could not be classified as indigent. So therefore the evil which conceivably might result from inducing people to come into the State with the promise of a job isn't taken care of by this statute.

Mr. SWEIGERT. I think it is because any company or any other person who induced a person to come into the State of California under such an arrangement, he would have means of support within the sense of the term and that might be——

Mr. JUSTICE JACKSON. But as soon as he was let out at the end of the season and became a public charge, it would be no crime on the part of the corporation.

Mr. SWEIGERT. I think it is a perfectly legitimate situation if a person comes under contract for a job.

Counsel mentioned the case of *De Jonge* v. *Oregon*. (299 U. S. 353). Anyway, this Court held that it was not due process of law for the State of Oregon to denounce as a crime the assistance by the defendant at a Communist meeting. Obviously this decision was based on the principle that the meeting itself, being a perfectly lawful meeting at which no doctrine of incitement to violence was urged and being an entirely lawful assembly, by no reasonable construction could any weight be found in the denouncement of that particular act of assisting at the meeting as a crime. I don't think that that has any application here. The theory of this statute is that the legislature has determined that the act of the person in California of bringing in or assisting in bringing into the State an indigent person willfully without any relationship involving the duty of support is, in itself, regardless of the right of the indigent person normally to come himself into California, an act which is related to the welfare of the State of California in respect to its health, housing, morale, expense and tax problems, and the legislature recognized that and denounced that act as a public offence, deeming it wise not to go to the extent of excluding indigent persons from California. The theory being that the legislature was perfectly willing that California should receive and accept what might be considered a normal influx of indigent persons themselves into the State of California, but would draw the line upon the acts of those persons in California who without any necessity and in the way of volunteers assisted or brought persons into California with knowledge of their indigency and that is well grounded upon the police power itself.

Mr. JUSTICE BLACK. I don't quite gather the argument. Let's assume now that a man had a constitutional right to go into California. You say here he had not been excluded by California law, but all that California did was to make it illegal for anybody to help him get there. On what basis do you think that it would be constitutional for him to exercise that right if he has a constitutional right to enter?

Mr. SWEIGERT. That does raise the question as to whether or not there is any power in the State to deal at all with the right of persons to come into the State of California who are indigent, in the sense that they are so destitute that the necessary implication of their condition is to resort to public aid.

The CHIEF JUSTICE. If you can lawfully prevent a person of this kind from being assisted for the reasons you stated, you can also prevent his entry if you saw fit, but you have not done it.

Mr. SWEIGERT. That is true, because the only reason we can denounce the act of bringing him into California is because of the fact that bringing in or assisting a person of that type is one of those cases in which this Court has recognized the power of the State to deal. Your Honors are familiar with the cases in the briefs that show that the Court, by way of dicta from 1837 to practically the end of the century, has stated and reiterated that a State in the exercise of its police power has a power to exclude persons who are paupers, vagabonds, fugitives from justice, and if Your Honors please, I call attention to the fact that those categories of persons were exempted from the application of the "privileges and immunities" clause of the Articles of Confederation, and which, under the *Slaughter House Case* and *United States* v. *Wheeler*, was held to be the precursor of article IV, section 2, of the Constitution, and the meaning of the Articles of Confederation was to carry the same limitations to "privileges and immunities" that were referred to in the fourth article of the Articles of Confederation. And it is an interesting thing to note that the Supreme Court also conceded the power of the State to have the power of exclusion, if the Court please, of persons in that category on the ground that the right to exclude persons in that category was related to the police power in the Articles of Confederation——

Mr. JUSTICE MURPHY. Is it your position that the State of California under its police power can exclude indigent persons?

Mr. SWEIGERT. Yes; and that——

Mr. JUSTICE MURPHY. There is no other legislation that has attempted to do so; is there? That is as near as it gets to it, that statute here, which makes it an offense to assist such a person.

Mr. SWEIGERT. That is right. That is the only approach. It has been a limited effort of the legislature to deal with this problem to a certain extent on the theory that the legislative determination is such that it is not wise to go further and that this is to an extent related to the problem in hand. The essential problem is the effect upon the general welfare, taxes, morale, and health of the State of California of the influx of persons who are destitute and dependent upon public aid. A further remark in connection with this statute, if the Court please, is that it contemplates that the condition of indigency must be known at the time the person is brought into the State of California. It does not apply to those persons who are likely to become indigent at some future time and that is a further limitation in connection with our interpretation of the statute.

Mr. JUSTICE FRANKFURTER. Assuming that you are right, that the statute is so worded as to include a limitation, what warrant is there to apply it to this case?

Mr. SWEIGERT. We have in the State of California many precedents for the construction of the word "indigent" as I have given it to the Court. The only point upon which we can say that there isn't any precedent in the California courts or elsewhere is the point that I make with respect to the nonapplicability of the statute to the act of one who brings persons into California who, though indigent, are those whom he has a legal obligation to support. That is the only thing I say we have no legal support for, but I base——

Mr. JUSTICE ROBERTS. That is not here.

Mr. SWEIGERT. That is not before the Court. The only thing before the Court to determine is whether or not the limited determination of the legislation——

Mr. JUSTICE ROBERTS. If we find that this man is an indigent under the law of California, the question is whether or not the State has a lawful right so to define indigency and punish a person assisting a person so defined to come into the State. That is the whole question. Is it a valid statute which defines indigency as this Court below has defined it under the circumstances of this case?

Mr. SWEIGERT. Do you mean is this case within the meaning of the term "indigency"?

Mr. JUSTICE ROBERTS. This term is within the meaning according to the State of California. We are bringing in an indigent person so defined as indigent.

Mr. SWEIGERT. That is the problem of this Court.

Mr. JUSTICE ROBERTS. We don't care how it is applied to other people who have relatives and what not.

Mr. SWEIGERT. I have attempted to give the Court what assistance we can, but I would like to remove from the minds of the Court any idea that we are placing an interpretation upon this statute that is not there. I don't think there is anything that can't be drawn out of the statute rather than be put into it. I think it should be construed in the historical sense of laws of this kind.

Exhibit No. 16.

SUPREME COURT OF THE UNITED STATES

No. 17.—October Term, 1941.

FRED F. EDWARDS, APPELLANT, *vs.* THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF YUBA.

[November 24, 1941.]

Mr. Justice BYRNES delivered the opinion of the Court.

The facts of this case are simple and are not disputed. Appellant is a citizen of the United States and a resident of California. In December, 1939, he left his home in Marysville, California, for Spur, Texas, with the intention of bringing back to Marysville his wife's brother, Frank Duncan, a citizen of the United States and a resident of Texas. When he arrived in Texas, appellant learned that Duncan had last been employed by the Works Progress Administration. Appellant thus became aware of the fact that Duncan was an indigent person and he continued to be aware of it throughout the period involved in this case. The two men agreed that appellant should transport Duncan from Texas to Marysville in appellant's automobile. Accordingly, they left Spur on January 1, 1940, entered California by way of Arizona on January 3, and reached Marysville on January 5. When he left Texas, Duncan had about $20. It had all been spent by the time he reached Marysville. He lived with appellant for about ten days until he obtained financial assistance from the Farm Security Administration. During the ten day interval, he had no employment.

In Justice Court a complaint was filed against appellant under Section 2615 of the Welfare and Institutions Code of California, which provides: "Every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor." On demurrer to the complaint, appellant urged that the Section violated several provisions of the Federal Constitution. The demurrer was overruled, the cause was tried, appellant was convicted and sentenced to six months imprisonment in the county jail, and sentence was suspended.

On appeal to the Superior Court of Yuba County, the facts as stated above were stipulated. The Superior Court, although regarding as "close" the question of the validity of the Section, felt "constrained to uphold the statute as a valid exercise of the police power of the State of California". Consequently, the conviction was affirmed. No appeal to a higher state court was open to appellant. We noted probable jurisdiction early last term, and later ordered reargument (313 U. S. 545) which has been held.

At the threshold of our inquiry a question arises with respect to the interpretation of Section 2615. On reargument, the Attorney General of California has submitted an exposition of the history of the Section, which reveals that statutes similar, though not identical to it have been in effect in California since 1860 [see Cal. Stat. (1860) 213; Cal. Stat. (1901) 636; Cal. Stat. (1933) 2005]. Neither under these forerunners nor under Section 2615 itself does the term "indigent person" seem to have been accorded an authoritative interpretation by the California courts. The appellee claims for the Section a very limited scope. It urges that the term "indigent person" must be taken to include only persons who are presently destitute of property and without resources to obtain the necessities of life, and who have no relatives or friends able and willing to support them. It is conceded, however, that the term is not confined to those who are physically or mentally incapacitated. While the generality of the language of the Section contains no hint of these limitations, we are content to assign to the term this narrow meaning.

Article I, Section 8 of the Constitution delegates to the Congress the authority to regulate interstate commerce. And it is settled beyond question that the transportation of persons is "commerce", within the meaning of that provision.[1]

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[1] Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 196, 203; Leisy *v.* Hardin, 135 U. S. 100, 112; Covington Bridge Co. *v.* Kentucky, 154 U. S. 204, 218; Hoke *v.* United States, 227 U. S. 308, 320; Caminetti *v.* United States, 242 U. S. 470, 491; United States *v.* Hill, 248 U. S. 420, 423; Mitchell *v.* United States, 313 U. S. 80. Cf. The Federal Kidnaping Act of 1932, U. S. C., Title 18, §§ 408a–408c. It is immaterial whether or not the transportation is commercial in character. See Caminetti *v.* United States, *supra*.

It is nevertheless true that the States are not wholly precluded from exercising their police power in matters of local concern even though they may thereby affect interstate commerce. *California* v. *Thompson*, 313 U. S. 109, 113. The issue presented in this case, therefore, is whether the prohibition embodied in Section 2615 against the "bringing" or transportation of indigent persons into California is within the police power of that State. We think that it is not, and hold that it is an unconstitutional barrier to interstate commerce.

The gravity and perplexity of the social and economic dislocation which this statute reflects is a matter of common knowledge and concern. We are not unmindful of it. We appreciate that the spectacle of large segments of our population constantly on the move has given rise to urgent demands upon the ingenuity of government. Both the brief of the Attorney General of California and that of the Chairman of the Select Committee of the House of Representatives of the United States as *amicus curiae* have sharpened this appreciation. The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not conceive it our function to pass upon "the wisdom, need, or appropriateness" of the legislative efforts of the States to solve such difficulties. See *Olsen* v. *Nebraska*, 313 U. S. 236, 246.

But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders. It is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside world. But, in the words of Mr. Justice Cardozo "The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin* v. *Seelig*, 294 U. S. 511, 523.

It is difficult to conceive of a statute more squarely in conflict with this theory than the Section challenged here. Its express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border. The burden upon interstate commerce is intended and immediate; it is the plain and sole function of the statute. Moreover, the indigent non-residents who are the real victims of the statute are deprived of the opportunity to exert political pressure upon the California legislature in order to obtain a change in policy. *South Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 177, 185, n. 2. We think this statute must fail under any known test of the validity of State interference with interstate commerce.

It is urged, however, that the concept which underlies Section 2615 enjoys a firm basis in English and American history.[2] This is the notion that each community should care for its own indigent, that relief is solely the responsibility of local government. Of this it must first be said that we are not now called upon to determine anything other than the propriety of an attempt by a State to prohibit the transportation of indigent non-residents into its territory. The nature and extent of its obligation to afford relief to newcomers is not here involved. We do, however, suggest that the theory of the Elizabethan poor laws no longer fits the facts. Recent years, and particularly the past decade, have been marked by a growing recognition that in an industrial society the task of providing assistance to the needy has ceased to be local in character. The duty to share the burden, if not wholly to assume it, has been recognized not only by State governments, but by the Federal government as well. The changed attitude is reflected in the Social Security laws under which the Federal and State governments cooperate for the care of the aged, the blind and dependent children. U. S. C., Title 42, §§ 301–1307, esp. §§ 301, 501, 601, 701, 721, 801, 1201. It is reflected in the works programs under which work is furnished the unemployed, with the States supplying approximately 25% and the Federal government approximately 75% of the cost. See, *e. g.*, Joint Resolution of June 26, 1940, c. 432, § 1 (d), 76th Cong., 3rd Sess., 54 Stat. 611, 613. It is further reflected in the Farm Security laws, under which the entire cost of the relief provisions is borne by the Federal government. *Id.*, at §§ 2 (a), 2 (b), 2 (d).

Indeed the record in this very case illustrates the inadequate basis in fact for the theory that relief is presently a local matter. Before leaving Texas, Duncan had received assistance from the Works Progress Administration. After arriving in California he was aided by the Farm Security Administration, which, as we have said, is wholly financed by the Federal government. This is not to say that our judgment would be different if Duncan had received relief from local agencies in Texas and California. Nor is it to suggest that the financial burden of assistance to indigent persons does not continue to fall heavily upon local and State governments. It is only to illustrate that in not inconsiderable measure the relief of the needy has become the common responsibility and concern of the whole nation.

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[2] See Hirsch, H. M., *Our Settlement Laws* (N. Y. Dept. of Social Welfare, 1933), *passim*.

What has been said with respect to financing relief is not without its bearing upon the regulation of the transportation of indigent persons. For the social phenomenon of large-scale interstate migration is as certainly a matter of national concern as the provision of assistance to those who have found a permanent or temporary abode. Moreover, and unlike the relief problem, this phenomenon does not admit of diverse treatment by the several States. The prohibition against transporting indigent nonresidents into one State is an open invitation to retaliatory measures, and the burdens upon the transportation of such persons become cumulative. Moreover, it would be a virtual impossibility for migrants and those who transport them to acquaint themselves with the peculiar rules of admission of many states. "This Court has repeatedly declared that the grant [the commerce clause] established the immunity of interstate commerce from the control of the States respecting all those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation must be prescribed by a single authority." *Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346, 351. We are of the opinion that the transportation of indigent persons from State to State clearly falls within this class of subjects. The scope of Congressional power to deal with this problem we are not now called upon to decide.

There remains to be noticed only the contention that the limitation upon State power to interfere with the interstate transportation of persons is subject to an exception in the case of "paupers". It is true that support for this contention may be found in early decisions of this Court. In *City of New York* v. *Miln*, 11 Pet. 103, at 143, it was said that it is "as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence which may arise from unsound and infectious articles imported . . ." This language has been casually repeated in numerous later cases up to the turn of the century. See, *e. g.*, *Passenger Cases*, 7 How. 283, 426 and 466–467; *Railway Company* v. *Husen*, 95 U. S. 465, 471; *Plumley* v. *Massachusetts*, 155 U. S. 461, 478; *Missouri, Kansas and Topeka Ry.* v. *Haber*, 169 U. S. 613, 629. In none of these cases, however, was the power of a State to exclude "paupers" actually involved.

Whether an able-bodied but unemployed person like Duncan is a "pauper" within the historical meaning of the term is open to considerable doubt. See 53 Harvard L. Rev. 1031, 1932. But assuming that the term is applicable to him and to persons similarly situated, we do not consider ourselves bound by the language referred to. *City of New York* v. *Miln* was decided in 1936. Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a "moral pestilence". Poverty and immorality are not synonymous.

We are of the opinion that Section 2615 is not a valid exercise of the police power of California, that it imposes an unconstitutional burden upon interstate commerce, and that the conviction under it cannot be sustained. In the view we have taken it is unnecessary to decide whether the Section is repugnant to other provisions of the Constitution.

Reversed.

A true copy.
Test:

Clerk, Supreme Court, U. S.

[November 24, 1941.]

Mr. Justice Douglas, concurring.

I express no view on whether or not the statute here in question runs afoul of Art. I, Sec. 8 of the Constitution granting to Congress the power "to regulate Commerce with foreign Nations, and among the several States". But I am of the opinion that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines. While the opinion of the Court expresses no view on that issue, the right involved is so fundamental that I deem it appropriate to indicate the reach of the constitutional question which is present.

The right to move freely from State to State is an incident of *national* citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. Mr. Justice Moody in *Twining* v. *New Jersey,* 211 U. S. 78, 97, stated, "Privileges and immunities of citizens of the United States . . . are only such as arise out of the nature and essential character of the National Government, or are specifically granted or secured to all citizens or persons by the Constitution of the United States." And he went on to state that one of those rights of *national* citizenship was "the right to pass freely from State to State". *Id.*, p. 97. Now it is apparent that this right is not specifically granted by the Constitution. Yet before the Fourteenth Amendment it was recognized as a right fundamental to the national character of our Federal Government. It was so decided in 1867 by *Crandall* v. *Nevada,* 6 Wall. 35. In that case this Court struck down a Nevada tax "upon every person leaving the State" by common carrier. Mr. Justice Miller writing for the Court held that the right to move freely throughout the nation was a right of *national* citizenship. That the right was implied did not make it any the less "guaranteed" by the Constitution. *Id.*, p. 47. To be sure, he emphasized that the Nevada statute would obstruct the right of a ctizen to travel to the seat of his national government or its offices throughout the country. And see *United States* v. *Wheeler,* 254 U. S. 281, 299. But there is not a shred of evidence in the record of the *Crandall* case that the persons there involved were en route on any such mission any more than it appears in this case that Duncan entered California to interview some federal agency. The point which Mr. Justice Miller made was merely in illustration of the damage and havoc which would ensue if the States had the power to prevent the free moving of citizens from one State to another. This is emphasized by his quotation from Chief Justice Taney's dissenting opinion in the *Passenger Cases,* 7 How. 283, 492: "We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States." Hence the *dictum* in *United States* v. *Wheeler, supra,* p. 299, which attempts to limit the *Crandall* case to a holding that the statute in question directly burdened "the performance by the United States of its governmental functions" and limited the "rights of the citizens growing out of such functions," does not bear analysis.

So, when the Fourteenth Amendment was adopted in 1868 it had been squarely and authoritatively settled that the right to move freely from State to State was a right of *national* citizenship. As such it was protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. *Slaughter House Cases,* 16 Wall. 36, 74, 79. In the latter case Mr. Justice Miller recognized that it was so "protected by implied guarantees" of the Constitution. *Id.*, p. 79. That was also acknowledged in *Twining* v. *New Jersey, supra.* And Chief Justice Fuller in *Williams* v. *Fears,* 179 U. S. 270, 274, stated: "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution."

In the face of this history I cannot accede to the suggestion (*Helson* v. *Kentucky,* 279 U. S. 245, 251; *Colgate* v. *Harvey,* 296 U. S. 404, 444) that the commerce clause is the appropriate explanation of *Crandall* v. *Nevada, supra.* Two of the Justices in that case expressly put the decision on the commerce clause; the others put it on the broader ground of rights of *national* citizenship, Mr. Justice Miller stating that "we do not concede that the question before us is to be determined" by the commerce clause. *Id.,* p. 43. On that broader ground it should continue to rest.

To be sure, there are expressions in the cases that this right of free movement of persons is an incident of *state* citizenship protected against discriminatory state action by Art. IV, Sec. 2 of the Constitution. *Corfield* v. *Coryell,* 4 Wash. C. C. 371, 381; *Paul* v. *Virginia,* 8 Wall. 168, 180; *Wrad* v. *Maryland,* 12 Wall. 418, 430; *United States* v. *Wheeler, supra,* pp. 298–299. Under the *dicta* of those cases the statute in the instant case would not survive, since California is curtailing only the free movement of indigents who are non-residents of that State. But the thrust of the *Crandall* case is deeper. Mr. Justice Miller adverted to *Corfield* v. *Coryell, Paul* v. *Virginia,* and *Ward* v. *Maryland,* when he stated in the *Slaughter House Cases* that the right protected by the *Crandall* case was a right of *national* citizenship arising from the "implied guarantees" of the Constitution. 16 Wall. at pp. 75–79. But his failure to classify that right as one of *state* citizenship protected solely by Art. IV, sec. 2, underscores his view that the free movement of persons throughout this nation was a right of *national* citizenship. It likewise emphasizes that Art. IV, Sec. 2, whatever its reach, is primarily concerned with the incidents of residence (the matter involved in *United States* v. *Wheeler, supra*) and the exercise of rights within a State, so that a citizen of one State is not in a "condition of alienage when he is within or when he removes to another State." *Blake* v. *McClung*, 172 U. S. 239, 256. Furthermore, Art. IV, Sec. 2, cannot explain the *Crandall* decision. The statute in that case applied to citizens of Nevada as well as to citizens of other States. That is to say Nevada was not "discriminating against citizens of other States in favor of its own." *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, 511 and cases cited. Thus it is plain that the right of free ingress and egress rises to a higher constitutional dignity than that afforded by *state* citizenship.

The conclusion that the right of free movement is a right of *national* citizenship stands on firm historical ground. If a state tax on that movement, as in the *Crandall* case, is invalid, *a fortiori* a state statute which obstructs or in substance prevents that movement must fall. That result necessarily follows unless perchance a State can curtail the right of free movement of those who are poor or destitute. But to allow such an exception to be engrafted on the rights of *national* citizenship would be to contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a dilution of the rights of *national* citizenship, a serious impairment of the principles of equality. Since the state statute here challenged involves such consequences, it runs afoul of the privileges and immunities clause of the Fourteenth Amendment.

Mr. Justice BLACK and Mr. Justice MURPHY join in this opinion.

Mr. Justice JACKSON, concurring

I concur in the result reached by the Court, and I agree that the grounds of its decision are permissible ones under applicable authorities. But the migrations of a human being, of whom it is charged that he possesses nothing that can be sold and has no wherewithal to buy, do not fit easily into my notions as to what is commerce. To hold that the measure of his rights is the commerce clause is likely to result eventually either in distorting the commercial law or in denaturing human rights. I turn, therefore, away from principles by which commerce is regulated to that clause of the Constitution by virtue of which Duncan is a citizen of the United States and which forbids any state to abridge his privileges or immunities as such.

This clause was adopted to make United States citizenship the dominant and paramount allegiance among us. The return which the law had long associated with allegiance was protection. The power of citizenship as a shield against oppression was widely known from the example of Paul's Roman citizenship, which sent the centurion scurrying to his higher-ups with the message: "Take heed what thou doest: for this man is a Roman." I suppose none of us doubts that the hope of imparting to American citizenship some of this vitality was the purpose of declaring in the Fourteenth Amendment: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ."

But the hope proclaimed in such generality soon shriveled in the process of judicial interpretation. For nearly three-quarters of a century this Court rejected every plea to the privileges and immunities clause. The judicial history of this clause and the very real difficulties in the way of its practical application to specific cases have been too well and recently reviewed to warrant repetition.[1]

While instances of valid "privileges or immunities" must be but few, I am convinced that this is one. I do not ignore or belittle the difficulties of what has been characterized by this Court as an "almost forgotten" clause. But the difficulty of the task does not excuse us from giving these general and abstract words whatever of specific content and concreteness they will bear as we mark out their application, case by case. That is the method of the common law, and it has been the method of this Court with other no less general statements in our fundamental law. This Court has not been timorous about giving concrete meaning to such obscure and vagrant phrases as "due process," "general welfare," "equal protection," or even "commerce among the several States." But it has always hesitated to give any real meaning to the privileges and immunities clause lest it improvidently give too much.

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[1] See dissenting opinion of Mr. Justice Stone in Colgate *v.* Harvey, 296 U. S. 404, 436, *et seq.*

This Court should, however, hold squarely that it is a privilege of citizenship of the United States, protected from state abridgment, to enter any State of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing.

The language of the Fourteenth Amendment declaring two kinds of citizenship is discriminating. It is: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." While it thus establishes national citizenship from the mere circumstance of birth within the territory and jurisdiction of the United States, birth within a state does not establish citizenship thereof. State citizenship is ephemeral. It results only from residence and is gained or lost therewith. That choice of residence was subject to local approval is contrary to the inescapable implications of the westward movement of our civilization.

Even as to an alien who had "been admitted to the United States under the Federal law," this Court, through Mr. Justice Hughes, declared that "He was thus admitted with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union." *Truax* v. *Raich*, 239 U. S. 33, 39. Why we should hesitate to hold that federal citizenship implies rights to enter and abide in any state of the Union at least equal to those possessed by aliens passes may understanding. The world is even more upside down than I had supposed it to be, if California must accept aliens in deference to their federal privileges but is free to turn back citizens of the United States unless we treat them as subjects of commerce.

The right of the citizen to migrate from state to state which, I agree with Mr. JUSTICE DOUGLAS, is shown by our precedents to be one of national citizenship, is not, however, an unlimited one. In addition to being subject to all constitutional limitations imposed by the federal government, such citizen is subject to some control by state governments. He may not, if a fugitive from justice, claim freedom to migrate unmolested, nor may he endanger others by carrying contagion about. These causes, and perhaps others that do not occur to me now, warrant any public authority in stopping a man where it finds him and arresting his progress across a state line quite as much as from place to place within the state.

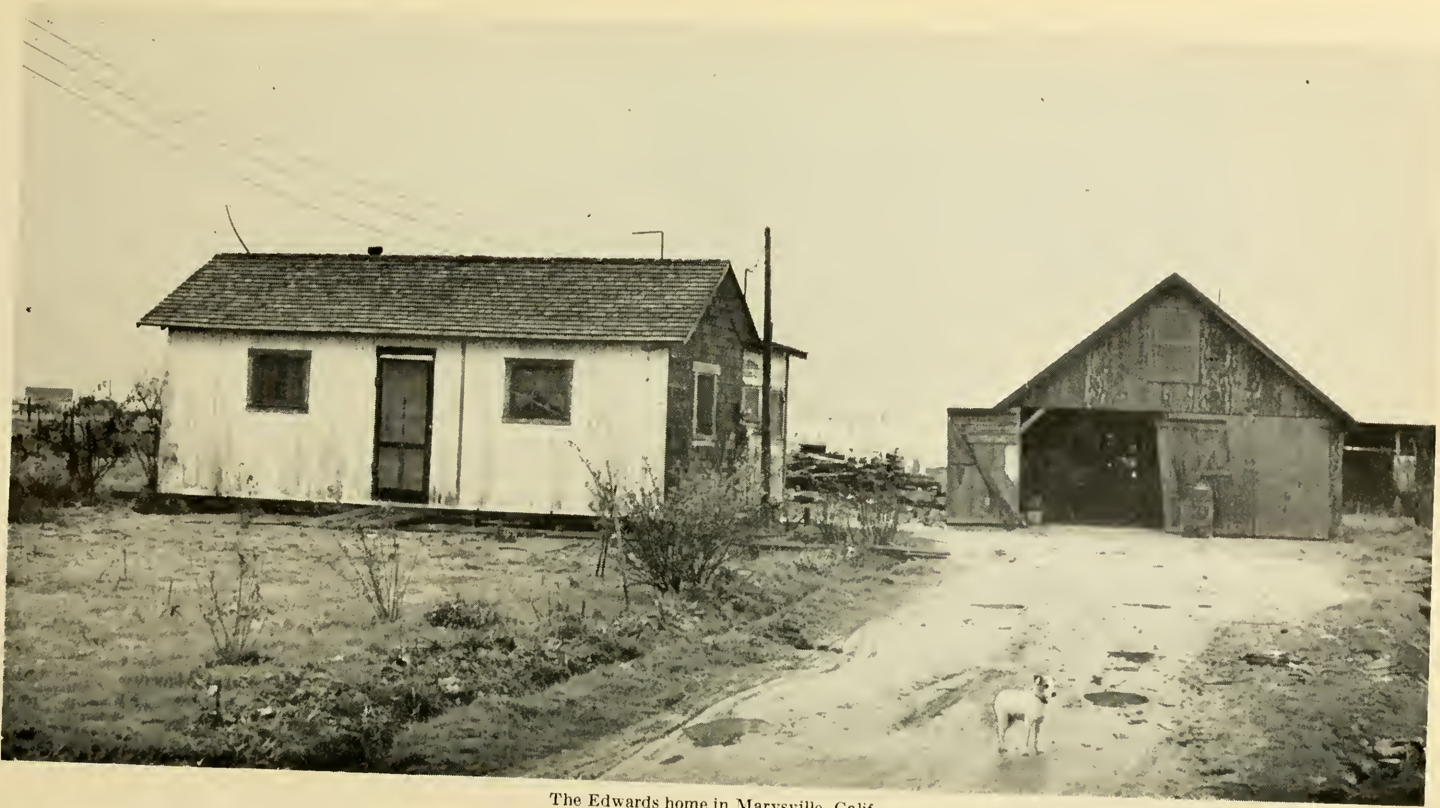
It is here that we meet the real crux of this case. Does "indigence" as defined by the application of the California statute constitute a basis for restricting the freedom of a citizen, as crime or contagion warrants its restriction? We should say now, and in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. "Indigence" in itself is neither a source of rights nor a basis for denying them. The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color. I agree with what I understand to be the holding of the Court that cases which may indicate the contrary are overruled.

Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but is also a short-sighted blow at the security of property itself. Property can have no more dangerous, even if unwitting, enemy than one who would make its possession a pretext for unequal or exclusive civil rights. Where those rights are derived from national citizenship no state may impose such a test, and whether the Congress could do so we are not called upon to inquire.

I think California had no right to make the condition of Duncan's purse, with no evidence of violation by him of any law or social policy which caused it, the basis of excluding him or of punishing one who extended him aid.

If I doubted whether his federal citizenship alone were enough to open the gates of California to Duncan, my doubt would disappear on consideration of the obligations of such citizenship. Duncan owes a duty to render military service, and this Court has said that this duty is the result of his citizenship. Mr. Chief Justice White declared in the *Selective Draft Law Cases*, 245 U. S. 366, 378: "It may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need and the right to compel it." A contention that a citizen's duty to render military service is suspended by "indigence" would meet with little favor. Rich or penniless, Duncan's citizenship under the Constitution pledges his strength to the defense of California as a part of the United States, and his right to migrate to any part of the land he must defend is something she must respect under the same instrument. Unless this Court is willing to say that citizenship of the United States means at least this much to the citizen, then our heritage of constitutional privileges and immunities is only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will.

Fred F. Edwards, defendant in the case.



The Edwards home in Marysville, Calif.

Frank Duncan, who was brought from Spur, Tex., to Marysville, Calif., by his brother-in-law, Fred F. Edwards.

10234–C

LET'S GO AMERICA

The Edwards family: Fred F., his wife Mellie, and their five children.

10234-D

The Duncan family. The baby on the extreme right of the above photograph was born after the Duncans arrived in California.

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